APPENDIX A

In the United States District Court, Northern District of Illinois, Eastern Division

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, PLAINTIFF

vs.

SEALY, INC., DEFENDANT

FINDINGS OF FACT

STATEMENT OF PROCEEDINGS

1. This is a civil action upon complaint of the United States of America (plaintiff) against defendant Sealy, Incorporated (Sealy) under 15 U.S.C. § 4 to prevent and restrain alleged violation by Sealy of the Sherman Act, 15 U.S.C. § 1. [Complaint, Para. 1]

2. Jurisdiction of the subject matter hereof and proper venue of the defendant hereto duly appear and are not contested. [Complaint, Paras. 1, 2; Answer, Para. 1]

3. The complaint herein was filed on May 31, 1960. It charges that Sealy and certain bedding manufacturers (not named, but designated as co-conspirators), licensed by Sealy to manufacture and sell items of bedding under the Sealy trade names and trademarks, have engaged in combination and conspiracy in unreasonable restraint of trade in Sealy products in violation of Section 1 of the Sherman Act. Paragraph 16 of the complaint charges that the "combination and conspiracy has consisted of a continuing agreement, understanding,

and concert of action among Sealy and the co-conspirators, the substantial terms of which have been that, with respect to Sealy products, they agreed:

> "(a) That each member factory will sell Sealy products only within the exclusive marketing territory allocated to it, and will refrain from selling Sealy products outside such exclusive marketing territory;
>
> "(b) to fix uniform suggested retail prices, and to induce retail stores to adhere to such suggested retail prices, for the purpose of fixing and stabilizing the retail prices of Sealy products."

[Complaint, Paras. 3–5, 12–14, 15–16]

4. Defendant filed its answer on August 1, 1960. It denies the allegations of the charging paragraphs of the complaint; it admits that "Sealy licensees are licensed to manufacture and sell Sealy products in specified geographical areas." [Answer, Para. 12] The definitions of "Sealy products" in both the complaint and answer exclude private label bedding, and there is no allegation that any licensee was restrained in any way in his manufacture or sale of products bearing his own label. [Complaint, Para. 10; Answer, Para. 6]

5. In its answer, defendant made the following affirmative statements in defense against the charges in the complaint:

> "a. The provisions of the Sealy licenses and Sealy's administration of its advertising, merchandising and quality control programs, attacked by the complaint herein, are reasonably ancillary to the proper protection and exploitation by Sealy of its trademarks, trade names, patents, processes and manufacturing and merchandising techniques.
>
> "b. The licensing arrangements between Sealy and its licensees are reasonable and necessary in order to enable said licensees (who are by United States Census definition 'small busi-

nessmen') to manufacture, nationally advertise, and sell products of uniform quality under the Sealy trade names and trademarks and thereby to provide effective competition in the bedding industry, and in particular with the well-established, nationally-advertised brands of the corporate manufacturers of bedding; such arrangements are neither designed to nor do they have the effect of unreasonably restraining competition.

"c. The licensing arrangements between Sealy and its licensees do not restrict the manufacture and sale by Sealy licensees of non-Sealy bedding (so long as such bedding is not passed off as a 'Sealy product'), and defendant avers upon information and belief that many of said licensees do in actual practice manufacture such non-Sealy bedding and sell the same both within and without their licensed territories.

"d. The licensing arrangements between Sealy and its licensees benefit the public through improved construction, uniformity in quality, reduced costs, and the additional competition which such arrangements enable Sealy licensees to provide in the bedding industry.

"e. The bedding industry of which Sealy and its licensees are a part is characterized in all parts of the United States by a large number of manufacturers and an even larger number of brands and grades of bedding in numerous price ranges, by vigorous competition among manufacturers for the business of retail stores and among retail stores for consumer trade, and the arrangements between Sealy and its licensees have not unreasonably restrained such competition.

"f. The relief for which plaintiff prays is contrary to the public interest in that it would tend to destroy the ability of Sealy and its licensees to compete in the bedding industry and would tend to augment the already substantial market positions enjoyed by the corporate

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manufacturers of nationally advertised brands of bedding." [Answer, Para. 15]

6. The trial commenced on December 5, 1963, and it proceeded in several separate stages for sixteen trial days, concluding on March 17.

7. Plaintiff's evidence in its case in chief was wholly documentary, consisting almost entirely of defendant's corporate documents, *i.e.*, charter, by-laws, stockholders, directors and committee minutes, and correspondence from its files.

8. At the close of plaintiff's case in chief, defendant filed a motion for judgment of dismissal under Rule 41 (b) of the Federal Rules of Civil Procedure, and oral argument was had thereon. The Court made the following ruling and comment: "the motion to dismiss at the end of the Government's case is overruled. However, let me say that should there ever be a decree there will be nothing in it finding that the territorialization, in my opinion, is a violation of the antitrust laws. * * *" [R. 2575]

9. In its defense, Sealy presented testimonial and documentary evidence expressly limited to the price allegations of Para. 16(b) of the complaint, and at the close of the trial it has renewed its motion to dismiss the territorial allegations of Para. 16(a) of the complaint under Rule 41(b). [see R. 3366–70]

10. While the complaint charges a single conspiracy, plaintiff's evidence was presented in segments relating either to the charging paragraph alleging territorial restrictions or the charging paragraph alleging price restrictions, and these two aspects of the complaint are severable. As the attorney for the plaintiff said in oral argument upon defendant's motion to dismiss:

> "There are only two issues in this case; one, have the defendants conspired to fix prices; two,

have they conspired to allocate territory." [R. 2517]

Similarly, in his opening statement, counsel for plaintiff said:

> "The defendant, Your Honor, would like to make this a complex matter. There is, however, Your Honor, only one conspiracy consisting of *two charges* or terms of the conspiracy in this case. The first is that the defendant conspired to fix prices, and the second is that the defendant was engaged in a conspiracy to divide territories. Thus, there are two sets *of facts,* the existence or nonexistence of which are all that need be ascertained." (Emphasis added.) [R. 11]

The Defendant

11. Sealy, Incorporated is a Delaware corporation with its headquarters and principal place of business in Chicago, Illinois [Complaint, Para. 3; Answer, Para. 3]

12. Sealy's principal business is the licensing of approximately thirty bedding manufacturers (Sealy licensees) to manufacture and sell mattresses, foundations and other items of bedding under the Sealy name and Sealy trademarks in accordance with prescribed specifications, in various parts of the United States. [Complaint, Para. 12; Answer, Para. 8; GX 1107, Interrogatory 7, R. 2369]

13. Sealy licensees pay royalties to Sealy for the privilege of using the Sealy name, trademarks, patents and processes [GX 31E, R. 273]; Sealy's royalty income in 1958 was $1.2 million, and in 1959, $1.4 million. [GX 1107, Interrogatory 7, R. 2369]

14. Sales of bedding by all Sealy licensees were $56.6 million in 1957, $56.4 million in 1958, and $58.6 million in 1959. During these three years, the annual sales of individual licensees ranged from a low

of $533,000 to a high of $6.5 million. In only one of these three years were there as many as five licensees with sales in excess of $3 million, and in each of the other two years about three-fourths of the licensees had sales between $1 million and $3 million. [GX 1107, Interrogatories 8 and 9, R. 2369]

PART ONE

THE ALLEGED CONSPIRACY TO DIVIDE MARKETS AND ELIMINATE COMPETITION IS REFUTED BY THE RECORD EVIDENCE

15. Plaintiff's basic contention is that defendant's territorial licenses were entered into for the purpose of dividing territories and eliminating competition among the Sealy licensee manufacturers and that, as such, they are *per se* illegal. Defendant claims, on the other hand, that the territorial provisions of its licenses were merely ancillary to the several entirely legitimate business purposes of the Sealy licensing arrangements, and that they do not unreasonably restrain trade in violation of the Sherman Act. In support of its position, defendant cites the origin, history, and development of Sealy and its predecessor companies, the evidence of their lawful commercial activities, and the complete absence of evidence of an unlawful purpose to divide markets and eliminate competition.

I. EARLY HISTORY OF SEALY UNDER SUGAR LAND INDUSTRIES

16. The evidence does not show the origin of the Sealy mattress or its manufacturers, but there is a reference in a registered trademark to the continuous use and application of the "Sealy" mark on bedding since 1889. [GX 987, R. 2272]

17. The record also contains several trademarks for mattresses that were registered by the Sealy Mattress Co. of Sugar Land, Texas, in 1918. [GX 987, R. 2272] The evidence identifies Sealy Mattress Co. in 1923 as the name of the mattress department conducted by Sugar Land Industries (Sugar Land), a trust estate (a form of business organization). [GX 2, p. 3–7111, R. 124]

18. In 1923, Sugar Land Industries entered into an option agreement with E. E. Edwards. This contract stated that Sugar Land owned "the trade name of 'Sealy Mattress Company' and various patents, trademarks, copyrights, trade names, and good will connected with the business conducted by * * * [Sugar Land] under the name of Sealy Mattress Company," and including trademarks registered in 1892 and 1895. The contract further stated that Sugar Land had entered into numerous license contracts with mattress manufacturers "in different parts of the United States," giving them the right to manufacture and sell mattresses under Sealy trade names and trademarks in exchange for the payment of royalties to Sugar Land. The contract gave Edwards the option to purchase the trade name of Sealy Mattress Company and all of the intangible assets of Sugar Land's mattress department, including the license contracts with other manufacturers, for $150,000. [GX 2, p. 3–7111, R. 124]

II. SEALY CORPORATION

A. *Organization of Sealy Corporation by E. E. Edwards*

19. E. E. Edwards appears throughout the early history of Sealy as shown in the record. In January 1925, he was chairman of the sixth semi-annual general convention of the Sealy mattress factories. In the minutes of that meeting, which were signed by Edwards, he summarized the comments he had made at the meeting on

his plan to purchase the patents, trademarks and good will of Sealy Mattress Co. He further stated that Thomas H. Cobbs, an attorney from St. Louis who had worked with him for the past three years on the Sealy plan, was present at the meeting. The plan envisioned organization of a new corporation, made up of Sugar Land's Sealy licensees, to take advantage of Edwards' option and purchase the intangible Sealy assets from Sugar Land. [GX 1(10), pp. 3–7084, 7093, R. 112]

20. A contract Edwards entered into with each Sealy licensee of Sugar Land prior to 1925 contained the statement that Edwards and his associates had been working for about seven years on a plan to organize a corporation to take over Sealy, "so that the name could be advertised and used for the benefit of all those manufacturers who hold license contracts, for the manufacture and sale of Sealy mattresses." [GX 2, pp. 3–7110, 7113, R. 124] The contract provided for the renewal of the Sealy licenses with the new corporation, for the election of Edwards as president, and for the licensees to receive three-fourths of the stock while Edwards and his associates received one-fourth of the stock of the new company "for his services in working out the plans for said organization, and promoting the same." [GX 2, p. 3–7114, R. 124]

21. The evidence indicates that E. E. Edwards was with the Sealy Mattress department of Sugar Land, and that he originated and promoted the idea of creating a separate corporation to own the Sealy name and intangible assets and to continue to license mattress companies to manufacture and sell Sealy bedding. The impetus for the organization of Sealy Corporation in 1925 came from E. E. Edwards, who stood to make a substantial profit from his 25% of

the stock if the new corporation were successful, and who had little or no personal liability if it were not.

22. Sealy Corporation was incorporated in Illinois in 1925; the incorporators and first formal Directors for purposes of incorporation were E. E. Edwards, who was elected president, Thomas H. Cobbs, the company's counsel, and William Hertz, an advertising man who became general manager in charge of the Chicago headquarters office. [GX 2A, pp. 3–7097–99, R. 151; GX 1(10), p. 3–7093, R. 112; GX 2, p. 3–7110, R. 124] The corporation proceeded with its plans as outlined above, with Edwards exercising his option and directing transfer of the intangible assets of Sealy Mattress Co. to Sealy Corporation in exchange for six promissory notes for $25,000 each from Sealy Corporation to Sugar Land. Stock in Sealy Corporation was issued as planned, and the stock was turned over to Sugar Land, along with a conditional reassignment of the assets, as security for the notes. [GX 2, pp. 3–7110, 7119, R. 124]

B. *Purposes of Sealy Corporation*

23. The "object for which it is formed" was announced in the Statement of Incorporation of Sealy Corporation, as required for incorporation. In addition to reciting purposes to manufacture and sell and advertise bedding and other goods, the statement of objects begins with these most pertinent purposes:

> "* * * to acquire, own, hold, use, buy, sell, lease, mortgage and otherwise deal in patents, trademarks, copyrights, tradenames, labels, brands, and all rights and interests therein; to license others to use, make, manufacture and sell merchandise under patents, trademarks, copyrights, tradenames, labels and brands. * * *" [GX 2A, p. 3–7098, R. 151]

24. At regular meetings of the Sealy licensees, first convened under Sugar Land's Sealy Mattress Co. and continued under the successor corporations, a number of subjects of legitimate interest to the licensees were discussed and put into practice. For example, at the same meeting in January 1925 at which Edwards and the licensees discussed the forthcoming incorporation of Sealy Corporation and the purchase of "Sealy" from Sugar Land, the following matters were considered: The possibility and advisability of arrangements to finance retail dealers; the specifications for composition of the filler material for mattresses; methods of grading cotton linters for purchase and use in mattresses, the trend of the market price of linters, and the appointment of a committee for joint purchasing of cotton linters; uniform methods of wrapping and packaging mattresses, and the testing of various types of cartons; uniform design and central purchasing of Sealy labels; group insurance for employees, viewing and purchasing metal beds manufactured for Sealy licensees under Sealy names by an outside manufacturer; development of improved Sealy bedsprings and of a new grade mattress; sales presentations by outside manufacturers of twine and machinery; and advertising and promotion, including a national advertising campaign, window displays, retention of display space in the Chicago Furniture Mart, and participation in national hotel exhibitions. [GX 1(10), R. 112]

25. Similar topics were considered at the next semiannual meeting of Sealy licensees, in June 1925, at which attorney Cobb reported that incorporation of Sealy Corporation had been completed and the stock issued; for example, the discussion concerned such matters as national magazine ads, joint purchasing, designs and specifications, promotional materials,

packaging, and infringement of the Sealy name by a non-licensee manufacturer located in Sealy, Texas. [GX 4(23), R. 157] This evidence negatives the existence in the origin of Sealy Corporation of a central conspiratorial purpose to divide the United States among competing mattress manufacturers.

26. Continuing to the time of the reorganization of Sealy in 1933, which will be described below, the same kinds of subjects principally engaged the interest and attention of Sealy Corporation and its licensees. For example, at the nineteenth semi-annual meeting of Sealy's executive committee in December 1932, at which there was discussion of the depression-caused financial difficulties of its licensees, and therefore, of Sealy Corporation, and of the possibility of a reorganization, there was also consideration of the following matters: The possibility of changing the royalty basis from licensees' sales to the circulation of national publications in licensees' territories, because, as one licensee put it, "the primary purpose of the organization is to secure national advertising, and that mainly is what each factory secures from the Sealy Corporation"; the desirability of signing enough licensees to operate Sealy factories in 47 cities because, as stated in the minutes, "it was unanimously conceded that the mattress business is very nearly a local business, and it is practically impossible for a foreign factory to go into a local territory and secure any profitable business"; proposed advertising expenditures; the desirability of Sealy employing sales managers and production engineers to visit licensees and consult with them about promotional and production ideas and problems; the semi-annual promotion and special promotional ideas; and joint purchasing. [GX 7(19), R. 165]

C. *Territorial Restrictions in Sealy Licenses*

27. There is no dispute over the fact that the Sealy licenses contain provisions assigning to each licensee an exclusive territory, in which Sealy agrees not to license any other person to manufacture or sell "Sealy products," and outside of which the licensee agrees not to manufacture or sell "Sealy products"; it is also undisputed that "Sealy products" include those manufactured according to Sealy specifications and sold with a Sealy label, and that there are no restrictions upon the areas where licensees can manufacture or sell their own-brand products as long as they are not passed off as Sealy products. [GX 1012–18, R. 2349, 2354; GX 1020–1106, R. 2354, 2358, 2360, 2361; see GX 74, pp. 3–1487–88, R. 509, and GX 75, p. 3–1482, R. 512, in which the Sealy Board of Directors, meeting in 1954, discussed the question of private brand sales in contiguous territories; then president E. H. Bergmann said that competition between Sealy products and licensees' private brands was permitted in the license contracts, expressly or by implication, and what was prohibited was "sale of private brand merchandise directly or indirectly, under the Sealy banner, or using the Sealy name or prestige in any way to merchandise or sell private brand merchandise."] A territorial provision like this has been in the Sealy licenses from the beginning of the licensing of the Sealy name and trademarks by Sugar Land Industries in the early 1920's.

28. The earliest territories were assigned on the basis of freight rates, with the boundary between any two licensees being the point at which the shipping cost from their factories became equal, so that farther shipment by either licensee would result in a higher shipping cost than a shipment to that location by the other licensee. A list in evidence entitled "Territory

Outline License Factories Per Contracts," with a 1925 date on it, shows the area covered out of each of twenty-six cities; the first city listed is typical of all of them, providing as follows:

> "RICHMOND, VIRGINIA: Richmond and all adjacent territory in every direction until Richmond railroad freight rates meet lower ones from Mebane, Louisville, Cincinnati, Pittsburgh and Baltimore." [GX 27, p. 3–7252, R. 250; see GX 4(23), p. 3–7128, R. 157, re the existence of 26 licensees]

Each of these cities appears in the record as a city where Sealy licensed a manufacturer. GX 27 also contains marginal dates in connection with some territories, some as early as April 1923. [pp. 3–7253, 7256]

D. *Disputes over Territorial Borders*

29. Border disputes arose almost immediately, and as early as April 1925, while Sealy Corporation was still being organized, a dispute between the Richmond and Atlanta licensees gave rise to an expression of sentiment at an Executive Committee meeting that boundaries should be made definite and not left to be determined by changing freight rates. [GX 21, p. 3–7020, R. 229] A motion that territories be permanently fixed was passed at the Sealy semi-annual meeting in June 1925, and at the meeting in January 1926 this was made firm by a motion that disputed territory boundaries be fixed according to first class freight rates on January 1, 1926, if no fixed boundary is specified in the license contract. [GX 4(23), p. 3–7126, R. 157; GX 11(28), p. 3–7135, R. 182; GX 26, p. 3–7040, R. 247; GX 13(31), p. 3–7161, R. 193, 195]

30. Disputes over boundaries were settled by Sealy Corporation, which had a contract containing territorial provisions with each licensee, and therefore,

could not disassociate itself from such disputes. However, in the settlement of such disputes Sealy encouraged discussions and negotiations among the licensees affected, so that there could be an attempt to reach amicable settlements. When a dispute reached the point at which Sealy had to decide the disagreement or interpret its contracts, then the licensees involved could not participate in Sealy's decision even if they were members of the Sealy Board of Directors or Executive Committee. For example, in a continuing boundary dispute between the Seattle, Washington, and Tigard, Oregon, licensees [GX 29, pp. 3–7046–47, R. 2541], the Sealy Executive Committee was unable to act at a 1927 meeting because the exclusion of Mr. Bowersox "by reason of his being a party to the contracts in question" resulted in the absence of a quorum; the matter, therefore, came before the January 1927 stockholders' meeting, and a decision was made to leave the two contracts in question unchanged. [GX 12(30), p. 3–7156, R. 187]

E. *Expansion by Sealy Corporation*

31. Sealy Corporation was not content to stop with the number of licensees secured by Edwards while he was with Sugar Land. On the contrary, specific plans were made to try to increase the number of licensees in order to fully cover all parts of the country, to increase the potential advertising budget, and to exploit the national advertising of the Sealy name and trademarks. In 1932 executives of Sealy were selected to work in various sections of the country, where they would visit prospective licensees to promote their acceptance of Sealy license contracts. [GX 7(19), pp. 3–7213, 7216–18, R. 165] This was not the kind of activity that could reasonably be expected of an organization formed or operated to divide the

country among a group of competitors, as Sealy is alleged to have been.

III. REORGANIZATION OF SEALY CORPORATION INTO SEALY, INCORPORATED

32. At the time of the Executive Committee meeting in December 1932, only eight Sealy licensees remained, presumably because of the business failures caused by the depression, and there was discussion of the financial difficulties of some former licensees and their indebtedness to Sealy Corporation. The evidence shows that Sealy Corporation defaulted on the notes payable to Sugar Land, and they were taken up by Sealy Mattress Company of Texas, E. E. Edwards' licensee company. [GX 7(19), pp. 3–7210–11, R. 165]

33. At the same meeting, the Executive Committee discussed reorganization of a company to succeed Sealy Corporation as owner of the Sealy name, trademarks, patents and good will originally purchased from Sugar Land. It was generally agreed that the basis for royalty payments by licensees should be changed from a per cent of sales to a pro rata amount of national advertising dependent upon the circulation of national publications in each licensee's territory. [GX 7(19), pp. 3–7211–12, 7214, 7215–17, R. 165]

34. At the Executive Committee meeting in July 1933, Edwards, as president of the practically defunct Sealy Corporation, was directed to proceed with incorporation of the new organization, to be known as Sealy, Incorporated. It was to be incorporated for $150,000, the amount paid to Sugar Land for the intangible Sealy assets. [GX 8(20), p. 3–7228, R. 173]

35. The incorporation was accomplished in August 1933 [GX 31A, R. 263], and Edwards was elected president of Sealy, Incorporated (the present defendant). [See GX 9, p. 3–7236, R. 174]

A. Purposes and Operations of Sealy, Inc.

36. After the reorganization in 1933, Sealy continued to operate much the same as it had prior to the reorganization. Some of the subjects discussed at the Sealy meeting in June 1936 were the following: Rewriting specifications of standard Sealy mattresses with respect to number of coils, type of cover, use of Sisal, etc.; preparation of mat books for distribution to licensees for advertising; and specifications and names of promotional pieces. The minutes of this meeting contain a reference to the election of H. E. Wolf to the presidency of Sealy, and the organization of the office of the corporation in Pittsburgh. [GX 31F(594), pp. 3–6653–54, 6657, 6662, R. 282]

37. At a meeting of the Sealy Board of Directors in November 1937, Earl Bergmann, then representative of the Cleveland licensee, stated that it was absolutely essential if Sealy were ever to have national significance for all Sealy plants to make the same merchandise and prove to dealers that they are offering a thoroughly uniform product. [GX 36(602), p. 3–6842, R. 321; GX 946, p. 3–1916, R. 2135; see also GX 593(31E, 32), p. 3–7248, R. 1359, in which it was decided at a Sealy meeting in July 1935 that the Sealy license contract would provide that each factory would manufacture Sealy products in strict accordance with specifications.]

38. In a "president's report" dated December 1939, H. E. Wolf cited what he considered some of the accomplishments during his presidency. He said that Sealy's first aim had been standardization, including

such elements as the trademarking of all important Sealy names, setting up complete specifications for Sealy products, development of standard forms to simplify reports to Sealy headquarters, furnishing definite cost figures and specifications for promotions, and furnishing specific instructions for production of items involving special manufacturing processes. Wolf further stated that Sealy had developed many sales features for its licensees, such as Nukraft, a product of the Goodrich Company made available to Sealy plants, the Duralife unit developed by the Pittsburgh licensee with extensive research by the Memphis licensee, and the Posture Pillow developed by the Sealy Executive Committee with experimentation at many Sealy plants, and with tests and research by Walter DeFries, Sealy's research engineer. Wolf mentioned the improvements in advertising and sales promotion, with the production of a catalog showing items of Sealy merchandise available throughout the country, the development of a mat portfolio containing a number of the most outstanding promotions developed by individual Sealy plants, creation of an effective newspaper institutional advertising campaign together with Sealy screen broadcasts, window displays and direct mail pieces, and the organization of a program of Sealy Sleep Shops. Wolf said that the licensees were well acquainted with Brody's work in connection with sales promotional efforts. He reported on Sealy's expansion in the areas of obtaining new licensees, securing the distribution of Firestone's Airtex, the availability of DeFries as research engineer, and expansion of Sealy's space at the American Furniture Mart in Chicago. In discussing future plans, Wolf proposed a more intensive advertising program, development of new bedding features, starting a strong campaign for hospital institutional busi-

ness, simplifying the Sealy line, an intensive membership drive to fill in all gaps in the present Sealy national picture, and the accomplishment of economies through standardized Sealy purchase of ticking, borders and similar items. [GX 46(945), p. 3–3221–26, R. 363]

39. In correspondence with W. J. Craig, a Sealy employee in the Chicago office, in November 1943, J. R. Haas, then president of Sealy, stated that he would not give the Chicago licensee or any other licensee permission to ship Sealy merchandise into unfilled territories without a definite agreement with the licensee that a specific royalty would be paid to Sealy for such shipments. He told Craig that if such service were rendered by any Sealy licensee, he wanted to be advised and to know that it was handled the way he wanted it handled, stating that as president of Sealy and, as such, the one responsible for its actions, he wanted to know what the corporation was doing. [GX 395, R. 1061; GX 396, R. 1059]

40. At a meeting of the Board of Directors in January 1951, then president Bergmann proposed a "Code of Sealy Ethics," which was adopted by the Board to be sent to Sealy licensees "for the purpose of establishing and maintaining friendly relationships between and among the contiguous Sealy plants." Some parts of the "Code" were restatements in layman's language of provisions in the license contracts. [GX 68(627), pp. 3–1653–54, R. 484; see, *e.g.*, GX 1056, p. 3–2187, R. 2358]

41. In January 1951, the Board of Directors established a procedure for "checking Sealy re-sale items manufactured by the plants for conformity to the specifications." This procedure involved the purchase of mattresses from retail stores in the franchised territory, which mattresses would then be exam-

ined to determine whether any licensee was violating Sealy's manufacturing specifications. If a violation was discovered, further purchases and examination would be made in the territory in question. Violations would be called to the attention of the Board of Directors. [GX 68(627), pp. 3–1651–52, R. 484] This procedure later came to be called the Vigilante Program, as noted in the minutes of meetings in 1954. [GX 638, p. 3–1508, R. 1491; GX 75, p. 3–1481, R. 512]

42. The president's annual report to the Sealy stockholders at the meeting in November 1953 did not even touch upon allocation of territories, but contained comments appropriate to a president's annual report to the shareholders of a corporation with regard to the following items: "Financial condition, income, net gains, dividends, sales, expansion of personnel, new national headquarters, Sealy Sleep Products, Ltd. [a Canadian corporation], legal matters, and prospects for the future of the organization." [GX 1011, p. 3–5533, R. 2342]

43. E. H. Bergmann, as president of Sealy, developed various committees composed of licensees and employees on the Sealy staff, which reported to the Executive Committee and Board of Directors, and which served to plan Sealy advertising, promotions, manufacturing specifications and general growth of Sealy. [See Section IIIB, *infra*] For example, at a meeting of the Board of Directors in April 1955, a number of questions arose with regard to various committees, as described in the following paragraphs. [GX 77 (642, 979), pp. 3–1436–56, R. 517]

44. At its April 1955 meeting, the Board reviewed the size of the Advertising Committee.

> "The president stated the primary reason for the size of this committee was to balance

it between plant representatives doing a large resale and those doing a large promotional business. Also, he felt it was necessary to bring in people who were deemed to be advertising minded and to train new members." [p. 3–1437]

Bergmann recommended that the full Advertising & Merchandising Committee should consist of the chairman of the Executive Committee plus six regional members. M. A. Kaplan, the Chicago licensee, expressed the view that the primary objective of the Advertising Committee was:

> "To prepare and guide advertising policies of Sealy with reference to the amount of money available for expenditure. He stated the job of the chairman in his opinion is to organize the meeting to promote creative thinking among members. * * *" [p. 3–1438]

Kaplan felt that the committee members "should be creative and have directive ability with national effort in mind rather than local effort." A motion was made and passed that the president select a chairman for the Advertising Committee and meet with the chairman to pick committee members, not to exceed five. [GX 77(642, 979), pp. 3–1437–38, R. 517]

45. At its April meeting, the Board received the report of the Planning and Expansion Committee, which had been created in January 1954. The report stated the responsibilities of the committee as outlined by E. H. Bergmann, as follows:

> "A. Study further requirements of Corporation and its Licensees.
>
> "B. Establish goal and set up program of procedure.
>
> "C. Recommend to the Board of Directors expansion of personnel deemed necessary to fill

requirements of the Corporation, or additional services to member Licensees." [p. 3–1446]

With respect to the Board of Directors, the committee said that it should at all times:

> "consist of capable, energetic, ambitious and sound thinking men, *who have the interests of Sealy, Inc., at heart,* and that *it is to the interest of Sealy, Inc.,* to use the talents and abilities of as many of its members as possible, therefore, the Board should be filled at all times with men of that caliber." (Emphasis added.) [p. 3–1448]

The committee commented that many trading areas were not producing the volume of Sealy business that could reasonably be expected and that the Board should find ways to correct this condition and bring all territories up to the reasonable par; in many instances, for example, the committee said that territories were entirely too far from the sources of supply, so that additional factories or warehouses should be established to serve those areas. [GX 77(642, 979), pp. 3–1446–51, R. 517]

46. In February 1956, a bulletin to the licensees asked for volunteers to serve on the Specification and Cost Committees. With regard to the Specification Committee, the bulletin indicated that a considerable amount of work would be involved because the specifications for the resale line were in need of a complete review and overhaul; the committee would also give attention to other bedding specifications required in Sealy's national work. [GX 777, R. 1771]

47. The type of functions performed by the Advertising & Merchandising Committee is shown in the minutes of the Committee meetings in December 1956 and January 1957. For example, the subjects considered at the December 1956 meeting included: Cleveland's merchandising plan for Anniversary Con.

sealy.beds; the Spring Posturepedic program; the 1957–1958 advertising budget; a retail salesman's incentive program for 1957; the January Market; a Posturepedic acetate folder; the semi-annual promotion, the Golden Sleep—1957; plans for a 1957 Holiday Special promotion; review of old TV film commercials; the question of Sealy paying for the preparation of ten-second television commercials; and the scheduling of another meeting to finalize plans for Spring Posturepedic and develop the program for the 1957 Golden Sleep promotion. [GX 662. p. 3-6200–05, R. 1576] At the meeting in January 1957, the Advertising & Merchandising Committee discussed principally the specific elements of the forthcoming promotions, the Spring Posturepedic and the Golden Sleep, including national magazine ads, window displays, sales portfolios, and similar promotional materials. [GX 664, p. 3–6212–17, R. 1593]

B. *Development of Sealy Staff*

48. At a meeting in November 1933, the Executive Committee agreed that it would be necessary to secure the services of some outstanding man in the mattress industry who would devote his time exclusively to Sealy—in other words, a full-time, professional executive, not associated with any of the licensees. [GX 9, p. 3–7236, R. 174]

49. At the Sealy meeting in August 1936, a number of advertising agencies made presentations for a Sealy advertising and promotion campaign, and one of them was selected "to handle Sealy advertising under the supervision of a Sealy advertising committee." A Mr. Handerson, identified as the advertising manager of the B. F. Goodrich Co., discussed joint and cooperative advertising between Sealy and Goodrich, which company was manufacturing the Nukraft pad

component for certain Sealy mattresses; Mr. Handerson indicated that he would be willing to act in an advisory capacity to the Sealy Advertising Committee. [GX 33(931), pp. 3–6685–87, R. 290]

50. At this same meeting in August 1936, H. E. Wolf, Sealy president, introduced Brody and Englehardt, who were interested in undertaking contact and general promotional work for Sealy. After they discussed their qualifications and the question of remuneration, they left the meeting, and the licensees discussed the relative merits of various persons who were being considered for this job. A motion was made and passed that the selection be left to president Wolf and E. H. Bergmann, a representative of the Cleveland licensee and secretary of Sealy. [GX 33 (931), pp. 3–6687–88, R. 290]

51. At an Executive Committee meeting in October 1936, there was a discussion of employment by Sealy of Brody and Englehardt, who would receive salary plus percentage of royalties paid by licensees, out of which they would pay the general administrative expenses of Sealy, including space in the Chicago Furniture Mart and the salary of a trained production man. Their remittance did not include advertising or advertising agency expenses. [GX 34, pp. 3–6697–98, R. 297]

52. The contract between Sealy and Brody and Englehardt was approved at an Executive Committee meeting in December 1936. Among other things, it provided that Brody and Englehardt would do the following: Consult with Sealy's advertising agency regarding preparation of effective advertising and sales promotion material; plan a program of organization for the purpose of securing additional licensees; contact manufacturers who were potential licensees and try to persuade them to sign a license contract

with Sealy; conduct an educational program as to the merits of Sealy products among the personnel of Sealy licensees and of Sealy retail dealers. [GX 932, pp. 3–6700, 6726, R. 2056]

53. At an Executive Committee meeting in January 1937, the secretary read suggested committee appointments, which were approved as read. The following committees were appointed: Advertising Advisory, Engineering, Styling, Merchandising, Cost and Accounting Practices, and Purchasing. [GX 933, p. 3–6760–61, R. 2081]

54. At the Board of Directors meeting in January 1937, president Wolf outlined the proposed committee set-ups recommended by the Executive Committee, and a motion was made and approved that "the selection of committees be left entirely in the hands of the President." [GX 934, p. 3–6762, R. 2083]

55. In November 1939, Sealy took permanent space in the American Furniture Mart in Chicago and moved its offices from Pittsburgh to Chicago. Brody was elected executive vice president of Sealy and was empowered to hire office assistants. [GX 45(613), pp. 3–3199–3200, R. 361]

56. In a "president's report" dated December 1939, H. E. Wolf made the following statements with respect to the use of committees to enhance the effectiveness of Sealy, Inc. and with respect to Brody's activities:

> "In order to assure all Sealy group members taking an active part in Sealy affairs, various Sealy committees were set up so that everyone could do his bit in some field, such as advertising, purchasing, etc. While some of these committees have not functioned as effectively as they might, the writer is sincerely hopeful that new appointments in this line will result

in the closest possible cooperation among Sealy group members.

"All of you are thoroughly acquainted with our various sales promotional effort during the past few years, and Mr. John M. Brody, Jr.'s work in this connection, and for this reason I am not going into detail about this matter." [GX 46(945), pp. 3-3223-24, R. 363]

57. Following World War II, at a Board of Directors meeting in 1945, J. R. Haas, then president of Sealy, "stated that he was in favor of training a man that might eventually become the head of Sealy, Incorporated." He had a man in mind and sought approval to hire him, but no vote was taken on the subject. [GX 956, p. 3-2050, R. 2155; see GX 957, p. 3-2058, R. 2157, in which J. R. Haas spoke at a licensee meeting "on the necessity for proper management and the need for additional top personnel."]

58. At the Board of Directors meeting in November 1950, Bergmann appointed the following standing committees: Advertising, Syndicate Selling, Grievance, and Merchandising and New Ideas. [GX 970, p. 3-1870, R. 2195] The make-up of the standing committees was somewhat different when Bergmann nominated them at the Board of Directors meeting in November 1951: Advertising, Specifications, Promotional Sales, New Ideas and Grievance. The Advertising Committee included, in addition to four licensees, the "Entire Staff" of Sealy. [GX 974, p. 3-1613, R. 2203] In what appears to be excerpts from an agenda for the Board meeting scheduled for April 1954, the 1954 committees are listed as follows: Advertising, Merchandising, Licensee Guidance & Advisory, Production & Cost, Promotional Sales, Specifications, (each committee listed above had as members one or more persons from the Sealy staff), Grievance, Markets, New Sale Ideas, Planning & Expansion,

Sales Managers and Upholstery. [GX 1005, p. 3–5366, R. 2318] The 1954 committee list was given to the Directors along with an outline of the functional responsibilities of each committee; the outline of responsibilities is not in evidence. [GX 638, p. 3–1508, R. 1491] The committees were not a great deal different in 1957; five of the seven committees included at least two members of the Sealy Staff. [GX 991E, p. 3–23, R. 2275][1]

59. At the meeting of the Board of Directors in April 1955, the Planning and Expansion Committee filed its report, which included the suggestion that all officers should be on the Sealy staff, as employees of Sealy, Inc. It also recommended that the president have his headquarters in Sealy's national office in Chicago. It recommended the addition to the Sealy staff of various sales and promotion members, as well as a Director of Sealy's Upholstery Division. After the report was submitted, a motion was made and passed that in the future all officers of Sealy were to be members of the Sealy staff. [GX 77(642, 979), pp. 3–1437–38, 1446–56, R. 517]

60. A list of employees of Sealy, Inc. from 1951 to the date of the list, shows that Sealy had a staff of twenty-three professional, technical and clerical persons in February 1957. [GX 991F, R. 2276]

C. *Ownership and Licensing of Trademarks*

61. In keeping with its purpose to own and license trademarks, copyrights, trade names, labels and

[1] Defendant's answer to plaintiff's Interrogratory 58 describes the activities and personnel of certain Sealy committees between 1957 and 1960 where, again, it is evident that members of the Sealy staff were active on these committees; several were chairmen of committees at least part of the time described. [GX 1113, Interrogatories 58, 62, pp. 58–1—58–8, 62–1—62–2, R. 2372]

brands, Sealy was continually interested in new names for its products. At the Executive Committee meeting in December 1936, plans were made for an immediate trademark search covering the ten standard Sealy names and for copyrighting the ten labels as soon as they became available. [GX 932, p. 3–6745, R. 2056]

62. At the Executive Committee meeting in January 1937, it was decided to trademark the name "Little Darling" for crib mattresses if it had not already been trademarked. [GX 933, p. 3–6760, R. 2081]

63. In November 1942, Mr. J. R. Haas was able to speak to the licensees about the progress of Sealy in its merchandising and in establishing and maintaining trademarks, all of which made possible an augmented advertising program for 1943. He also discussed the purchasing of cotton for the Sealy Tuftless mattress. [GX 950, p. 3–1952, R. 2141]

64. In 1956 a trademark search was made for Sealy's patent counsel on the trademark "Posture Perfect," and twenty-one references to similar terms used by other companies were found, mostly registered for use in Class 32, for mattresses. [GX 986, p. 3–1304–09, R. 2272]

65. GX 987 is a collection of Sealy trademarks registered between August 1918 and April 1956, inclusive. Thirty-three registered trademarks are included. The cover sheet indicates that these came from the files of Sealy's patent and trademark counsel. [GX 987, p. 3–35—67, R. 2272]

D. *Stock of Sealy, Inc.*

66. In 1936, E. E. Edwards left Sealy, selling his 325 shares of stock to Sealy for $9,750, or $30 per share; at the same time Sealy purchased 254 shares

of stock held by the Southern Commercial Corporation (formerly Sealy Mattress Co., Edwards' Texas licensee) for $7,620. [GX 932, p. 3–6726–27, R. 2056; see GX 34, p. 3–6693, R. 297]

67. At the stockholders meeting in November 1946, the Sealy stock was put on a 6% dividend basis. [GX 55, p. 3–2090, R. 419; see GX 60(961), p. 3–1693–94, R. 440; GX 962, p. 3–1696, R. 2166]

68. The Sealy stock was distributed in such a way that each licensee did not have an equal voice with each other licensee. For example, as of March 1947, U.S. Bedding Company, Sealy's Memphis licensee, owned 344 shares of the 790 shares of Sealy stock outstanding. At the same time, Seniel Ostrow, the Los Angeles licensee, owned 60 shares, and Ernest Wuliger, the Cleveland licensee had 77 shares, so that either of them could vote with the Memphis licensee to exercise voting control of Sealy. The Memphis licensee plus any two of a number of other licensees could similarly exercise voting control of Sealy. [GX 958, R. 2159]

69. At the stockholders meeting in November 1947, the by-laws were amended to provide that no licensee could own or control more than 38% of the common stock of Sealy. [GX 962, p. 3–1697, R. 2166]

70. At the Sealy meeting in July 1948, the president stated that "approximately ninety-eight (98) shares of stock of Sealy, Incorporated was available at $105.00 per share, it being pointed out that each licensee would be entitled to four shares." [GX 964, p. 3–1739, R. 2173]

71. At the Board of Directors meeting in November 1951, E. H. Bergmann "reported that he had requests for the purchase of common stock of Sealy, Incorporated by the following persons and corporations:" Brown Reliable Bedding Co., the Detroit li-

censee, 28 shares, and the president and secretary of this licensee, 50 shares each; the Chicago licensee, 50 shares; the Waterbury, Connecticut, licensee, 10 shares; and president Bergmann, 10 shares. A motion was made and passed authorizing Sealy to issue said shares at $100 per share. [GX 972(629), p. 3–1623, R. 2198]

72. In November 1951, there were 1,173 Sealy shares outstanding. The Memphis licensee still had the largest single block of stock—344 shares. At that time the Detroit licensee and several members of the family that controlled the Detroit licensee together owned 150 shares of Sealy stock, and the Chicago licensee owned 103 shares. Thus, these two licensees plus Memphis could exercise control of Sealy. [GX 973, p. 3–1615, R. 2203]

73. At the Board of Directors meeting in November 1952, E. H. Bergmann

> "stated that he had requests for additional purchases of Sealy, Incorporated stock at $100.00 per share. The requests were as follows: 50 shares by Mrs. Bertha Hartman, 5 shares by J. R. Lawrence, 25 shares by E. H. Bergmann, 10 shares by Sidney Sutherland, 10 shares by J. Rudick, 20 shares by the Waterbury Mattress Company, 3 shares by the Empire State Bedding Company, 25 shares by M. H. Yulman, and 21 shares by the Slumber Mattress Company."

A motion was made and passed that purchase of said shares be authorized. [GX 976 (70), p. 3–1576, R. 2207]

74. In the president's report to the stockholders of Sealy at the close of the fiscal year ended June 30, 1954, the following statement was made with regard to corporate organization:

"The corporation has an authorized capital of $250,000.00 consisting of 2,500 shares of common stock, of a par value of $100.00 per share. As of June 30, 1954, 2431 shares of this stock has been issued, of which 959 shares was classified as Treasury stock. Since June 30, 1954, all of the remaining 69 shares of unissued stock was sold. In addition 359 shares of the 959 shares of stock classified as Treasury stock was offered to stockholders on a pre-emptive basis. All of the stock so offered was purchased except 61 shares which was divided equally on a per plant basis. There remains, as of the date of this report, only 600 shares of Treasury stock which has not been offered for sale. The Board of Directors on September 20, 1954 passed a resolution that the remaining 600 shares of stock could only be sold on the basis of the pre-emptive rights of the then existing stockholders." [GX 1011, p. 3-5543, R. 2342]

75. By September 1956, at which time there were 1,900 shares of Sealy stock outstanding, the Memphis license had changed hands, and the new licensee, Slumber Products Co., had only 53 shares, no longer enough to control with another small group of shareholders. However, at this time the Detroit licensee interests owned 474 shares, which, for example, were sufficient when combined with the Kansas City and Chicago licensee interests and E. H. Bergmann to provide effective control of Sealy. A number of other small groupings could similarly control the corporation. [GX 985, p. 3-1347, R. 2238]

76. Sealy's accounting statement for the year ended June 30, 1956, shows 1,900 shares of stock issued and outstanding, and capital and surplus of $669,495. This means that the Sealy stock had increased in book value to approximately $352 per share. [GX 996, p. 3-2765, R. 2291]

77. At the meeting of the Board of Directors in November 1956, the Board was apprised of E. M. Wuliger's offer of $4,000 to Sidney Sutherland for the Sealy stock owned by him. (GX 985 shows 21 shares owned by Sidney Sutherland as of September 26, 1956.) On motion made and passed, it was resolved that:

> "the executive office be instructed to ascertain whether or not it would have any effect on the value of the stock if E. M. Wuliger purchased it, or if the corporation purchased it, and, assuming no change would result, and all things being equal, that E. M. Wuliger be allowed to purchase the stock rather than the corporation." [GX 984(82), p. 3–1351, R. 2232]

E. *Royalties by Licensees*

78. The earliest method by which Sealy obtained royalty income from its licensees was through the sale of the Sealy labels that were required to be affixed to all Sealy products. The price of the labels was determined by the values assigned for that purpose by Sealy to the various Sealy products to which the labels would be affixed. The license contract provided certain minimum considerations payable to Sealy each month in the event that the prescribed minimum amount was not paid to Sealy through the purchase of labels. [See, *e.g.*, GX 1016, pp. 3–3410–14, R. 2354.]

79. At an Executive Committee meeting in December 1936, in a discussion of the possibility of the Memphis licensee relinquishing certain territories, E. H. Bergmann stated that:

> "the only basis on which the territorial situations could be worked out, in all fairness to Sealy, Incorporated, was to set up a fair royalty return from each territory, either by warehouse or direct contact, live up to the expected returns or else yield the said territory to Sealy,

Incorporated for licensing.'" [GX 932, p. 3-6700, R. 2056]

80. Sealy's profit and loss statement for the period January 1, 1937, through November 30, 1937, shows royalties in the amount of $54,247.02. Sealy's profit and loss statement for the period July 1, 1937, to December 1, 1937, shows royalties in the amount of $25,659.60. [GX 940, pp. 3-6881-82, R. 2103]

81. Sealy maintained control over the amount of royalty payments it collected from its licensees. At the Board of Directors meeting in March 1945, Herbert J. Haas, Sealy's attorney, reported on the preparation of new license contracts, and a motion was made and seconded that:

> "the contracts might provide for the grant of permanent license to Licensees when authorized by the Board of Directors after a study of the record of the respective Licensee, but the permanent contracts should contain a provision that upon 90 days' notice from Sealy, Incorporated shall have the right to increase or decrease royalty payments, raise or lower minimums, and make such other changes in the contracts as Sealy, Incorporated shall deem necessary or expedient except that the territory provided in the license shall not be changed, and that no permanent license can be granted except by a vote of three-fourths of the Board of Directors." [GX 53, pp. 3-2020-21, R. 405]

82. The royalty payment was later changed to 3% of the licensee's gross sales up to a certain amount, then 2%, and then 1% as various sales plateaus were reached; the minimum monthly payment was retained as part of the royalty provision. The 3% royalty provision was in Sealy's standard contracts by 1950. [GX 1061, p. 3-2350-51, R. 2358; see also GX 58 (960), p. 3-1682, R. 428; GX 59, p. 3-1685, R. 437;

GX 60(961), p. 3–1694–95, R. 440; GX 61, p. 3–1706, R. 447; GX 62(619, 963), p. 3–1715, R. 450; see, *e.g.*, GX 1063, pp. 3–2374–75, R. 2358; GX 1064, pp. 3–2390–93, R. 2358; GX 1065, pp. 3–2409–13, R. 2360]

83. Sealy's gross royalty income for the years ending June 30, 1953 through 1956, appears in the record as follows: 1953—$766,501; 1954—$803,861; 1955—$977,721; 1956—$1,167,052. [GX 999A, p. 3–2800, R. 2299; GX 999, p. 3–2790, R. 2298; GX 998, p. 3–2780, R. 2295; GX 996, p. 3–2766, R. 2291]

IV. EVIDENCE SPECIFICALLY NEGATING THE TERRITORIAL CONSPIRACY ALLEGATIONS OF THE COMPLAINT

84. The preceding findings indicate the type of evidence in this record that demonstrates that there has never been a central conspiratorial purpose on the part of Sealy and its licensees to divide the United States into territories in which competitors would not compete. Their main purpose has been the proper exploitation of the Sealy name and trademarks by licensing bedding manufacturers to manufacture and sell Sealy products in exchange for royalties to Sealy. The fact remains that each licensee was restricted in the territory in which he could manufacture and sell Sealy products. However, the record shows that this restriction was imposed by Sealy and was also secondary, or ancillary, to the main purpose of Sealy's license contracts. The following findings are based upon the evidence specifically related to the territorial restrictions. They show, mostly by representative examples rather than a summary of all the evidence, that: The Sealy executive committee rejected a specific proposal to divide the country among Sealy licensees; Sealy continually sought new licensees to fill in uncovered territory; and licensees

relinquished territory that was not within their natural trading areas, so that it would be covered by other licensees, existing or new. These facts are incompatible with a finding that the Sealy licensees conspired to allocate territories among themselves.

85. An excellent example of the manner in which Sealy acted in its allocation of territories to licensees and in its continuing relationship with licensees is provided by plaintiff's evidence with respect to several states in the Southeastern part of the United States, namely, North and South Carolina,

[GX 33(931), p. 6679, R. 290; GX 34, p. 3–6698, R. 297; GX 932, p. 3–6700, R. 2056; GX 941, p. 3–6903, R. 2109; GX 942(40, 605), p. 3–6907, R. 2113; GX 42(610), pp. 3–3132, 3140, R. 345; GX 52, p. 3–1955–56, R. 398; GX 156, R. 600; GX 157, R. 601; GX 158, R. 602; GX 956, p. 3–2050, R. 2155; GX 159, R. 602; GX 59, p. 3–1685, R. 437; GX 60(961), p. 3–1693, R. 440; GX 61, p. 3–1709, R. 447; GX 160, R. 608; GX 161, R. 609; GX 62(619, 963), p. 3–1714, R. 450; GX 184, R. 662; GX 63, p. 3–1746, R. 454; GX 189, R. 673; GX 190, R. 675; GX 191, R. 677; GX 192, R. 679; GX 193, R. 681; GX 194, R. 683; GX 195, R. 687; GX 196, R. 689; GX 220, R. 747; GX 208, R. 718; GX 209, R. 721; GX 197, R. 694; GX 198, R. 696; GX 221, R. 750; GX 214, R. 733; GX 219, R. 736; GX 217, R. 742; GX 216, R. 739; GX 218, R. 744; GX 226, R. 763; GX 227, R. 766; GX 222, R. 753; GX 64, pp. 3–1818–19, R. 457; GX 228, R. 768; GX 229, R. 769; GX 211, R. 729; GX 224, R. 757; GX 225, R. 760; GX 199, R. 699; GX 200, R. 701; GX 201, R. 702; GX 624, pp. 3–1851–52, R. 1455; GX 625 (67), p. 3–1853, R. 1457; GX 632, p. 3–1585, R. 1477; GX 304, R. 898; GX 307, R. 903; GX 308, R. 906; GX 311, R. 910; GX 295—GX 316, GX 70(976), R. 495, R. 868–917; GX 80, p. 3–

1400, R. 534; GX 389, R. 1042; GX 390, R. 1046; GX 391, R. 1047; GX 392, R. 1049; GX 393, R. 1045; GX 394, R. 1055;

and Georgia and Florida,

GX 941, p. 3-6903, R. 2109; GX 942 (40, 605), p. 3-6907, R. 2113; GX 52, p. 3-1955, R. 398; GX 62 (619, 963), p. 3-1714, R. 450; GX 59, p. 3-1685, R. 437; GX 228, R. 768; GX 229, R. 769; GX 65, p. 3-1839, R. 464; GX 66, p. 3-1849, R. 474; GX 624, p. 3-1851, R. 1455; GX 300, R. 884; GX 300A, R. 887; GX 70 (976), p. 3-1575, R. 495; GX 337, R. 948; GX 339, R. 955; GX 342, R. 959; GX 343, R. 960; GX 344, R. 960; GX 1008, p. 3-5461, R. 2324; GX 386, R. 1039; GX 387, R. 1039; GX 81 (983) p. 3-1367, R. 537; GX 388, R. 1040; GX 382, R. 1026; GX 82 (984), pp. 3-1350-51, R. 541; GX 1107, R. 2381; GX 1115, R. 2379.

It clearly portrays Sealy's attempt to exploit its name and trademarks to the fullest extent by assigning territory to whatever bedding manufacturer is available which can do the best job for Sealy, whether such manufacturer is an existing licensee located near the open territory or a potential new licensee. In attempting to thoroughly cover the Southeastern states with Sealy distribution, Sealy obtained territory from old licensees, found new licensees, shifted territory among licensees, discontinued its contracts with some licensees, and finally found a satisfactory licensee for the Carolinas at Lexington, N.C., but never did, insofar as the record shows, settle on a suitable licensee for Georgia and Florida. This series of events negatives the contention that Sealy is a front for competitors who created it and use it to divide the United States among themselves to avoid competition.

A. *Rejection of Proposal to Divide United States Among Existing Licensees*

86. At the reorganization meeting of the Sealy Executive Committee in July 1933, H. E. Wolf proposed that the eight Sealy licensees then in existence divide the entire United States between them. According to the minutes, this was seriously considered and discussed at length, but rejected. The "vital thing in which each was more concerned was the raising of a large national advertising fund immediately." It was "unanimously agreed that a large number of new factories be brought into the Sealy Corporation," [GX 8(20), p. 3-7228, R. 173]. From that time forward, and up to the latest times covered by plaintiff's evidence, the record shows that Sealy continued to seek new licensees to fill in parts of the country not adequately served by existing licensees. It is obvious that an essential inducement to prospective licensees—to get them to undertake the obligations of a Sealy license—was the grant of exclusive rights in the territories in which Sealy asked them to manufacture, distribute, and pay royalties.

B. *Sealy, Not Licensees, Granted Territories, Pursuant to Contract*

87. On February 15, 1950, J. R. Lawrence, of Sealy, wrote to the Cincinnati licensee about an agreement between the Cincinnati and Memphis licensees whereby Cincinnati took over, on a temporary trial basis, a portion of the Kentucky counties previously served by Memphis. Lawrence made it clear to the Cincinnati licensee that "the franchising of territories is an exclusive right that is the property of Sealy, Incorporated," and a licensee could not relicense territory to another plant. Lawrence further stated that

the Memphis licensee had released the territory in question to Sealy, which had begun negotiations with a prospective Kentucky licensee, so that the most that could be done by the Cincinnati licensee would be to serve the territory on a temporary basis. [GX 234, R. 781; see GX 233, R. 778]

88. With regard to confusion that arose between the Denver and California licensees as to the state of Nevada, it developed that the state was included in both licensees' contracts with Sealy. On February 16, 1950, J. R. Lawrence, of Sealy, wrote to Herbert Haas, Sealy's attorney, and stated that Earl Bergmann was going to write to the Denver licensee and advise it that if the state of Nevada was listed in its new contract, then, obviously, "it was an error as we cannot franchise territory we do not possess." [GX 176, R. 646]

C. *Release of Unused Territory for New Licensees and Temporary Service of Such Territory*

89. At the Sealy meeting in August 1936, there was a recommendation that Sealy licensees release territories available for new licensee prospects to provide for nationwide expansion, and that licensees no longer be permitted to subcontract portions of their territories. The reasons given were that this would assure additional revenue for Sealy, more equitably distribute the advertising burden and provide proper distribution to take advantage of national advertising. The reallotment of territories should be made, it was said, "either on the basis of population, or, to follow the natural, or normal, trading area surrounding a particular manufacturer in a particular locality." [GX 33(931), p. 6677, R. 290] A motion was made and passed that the licensees

"relinquish and release to Sealy, Incorporated territories other than those making up their normal trading area, that is, territories now being worked advantageously by the respective Sealy factories, and that Sealy, Incorporated be given the power to contract with manufacturers in these territories directly, thus eliminating the sub-manufacturer's contract forming a part of the present plan." [GX 33(931) p. 3-6679, R. 290]

Pursuant to the motion, various licensees in attendance expressed their willingness to release parts of their existing territories to Sealy. [GX 33(931), pp. 3-6677-80, R. 290]

90. At the Board meeting in June 1937, representatives of the B. F. Goodrich Company stated that they had experienced considerable difficulty in having Sealy mentioned frequently in Goodrich advertising "because Sealy does not have proper national distribution." [GX 937(597, 608), p. 3-6786, R. 2088; see GX 33(931), p. 3-6690, R. 290]

91. At the Executive Committee meeting in August 1937, E. H. Bergmann moved, and the motion was approved "that definite sales quotas be set up for the various Sealy territories, with the understanding that any plant failing to live up to its quota should be charged with that quota or forced to release the territory." These quotas were to be based upon "proper trading areas," and also on buying power per family or per capita within each territory. [GX 35(599), p. 3-6824, R. 310]

92. At an Executive Committee meeting in April 1938, president Wolf "outlined the territorial sacrifices made by various Sealy plants for the benefit of the Corporation." At this meeting the Memphis licensee ceded additional territory to Sealy. A motion was made and passed that: "All territory, once ceded

to the Corporation, is to be considered Corporation property, and that any such territory which becomes open due to a member leaving the group, or for some equally good reason, is to revert to the Corporation." The original owners of such territories were to receive "special permission by the Corporation" to serve such territories until such time as new licensees were appointed, "in order to keep the Sealy name alive" in otherwise open areas. The original owners would "be consulted when a new licensee is brought in and the territory re-aligned on the basis of the geographical position of the new licensee." [GX 40(605, 947), pp. 3-6906-08, R. 329; see GX 46(945), p. 3-3224, R. 363]

93. At an Executive Committee meeting in April 1940, it was decided that temporary licenses by Sealy to existing Sealy manufacturers for warehouse activities in open territories were granted upon the premise that such manufacturers would "fully service and fully advertise the name of Sealy in said territories or otherwise withdraw from the area." At this meeting, the Memphis licensee was authorized to temporarily service certain Indiana territories, and the Pittsburgh licensee, the Philadelphia territory, out of Indianapolis and Philadelphia warehouses, "until such time as more suitable factory connections can be made for Sealy." [GX 48(616), p. 3-1886-87, R. 370]

94. Between November 1949 and February 1950, Sealy corresponded with its Memphis and Cincinnati licensees with respect to certain territory the Memphis licensee was willing to surrender for coverage by the Cincinnati licensee and a proposed new Louisville licensee. In response to a question from Sealy as to the counties it anticipated continuing to work in Kentucky, the Memphis licensee wrote that "'we will be

willing to surrender everything in Kentucky other than the counties as indicated on this list and the town of Evansville, Indiana." [GX 230, R. 772–73; GX 231, R. 774; GX 232, R. 777; GX 233, R. 778; GX 234, R. 781] On February 22, 1951, the Memphis licensee wrote to Sealy, confirming the fact that it had surrendered Evansville, Indiana, to the Louisville plant. [GX 278, R. 839]

D. *Procurement of New Licensees*

95. In his "president's report," dated December 1939, H. E. Wolf, speaking about expansion, said that since his presidency, Sealy "has had the privilege of welcoming such members as the Barcalo Manufacturing Company, the Marquardt Company, the Fred G. Hodges Bedding Company, the Ingraham Manufacturing Company, and Osiason, Incorporated." [GX 46(945), p. 3–3224, R. 363]

96. At an Executive Committee meeting in July 1941, J. R. Haas discussed the procurement of new licensees, citing six new plants that would form a nucleus for ten plants contemplated to serve the northeastern Atlantic Seaboard area. He outlined the territory to be covered by four of the new licensees "as allotted by executive committee." [GX 51, p. 3–1914, R. 394]

97. On October 7, 1942, Brody wrote to J. R. Haas, then president of Sealy, to say that he had made a careful survey and sales analysis of all territories then open in the United States and Canada. He reviewed the open territory and outlined an expansion program and proposed a calendar for immediate and future Sealy development work. Brody stated the basis for a proposed new licensing of territories as follows:

> "Based upon population, buying power, trading areas and freight rates, I have divided this

open territory into areas each of which is suitable for the operation of an additional Sealy plant." [GX 110, p. 3–5017, R. 563]

98. During the years that followed, Sealy was constantly working to secure national distribution of Sealy products and the most effective coverage of all parts of the United States. Sometimes this would involve adding new licensees, while at other times, it meant that Sealy would re-allocate unused or released territory to existing licensees. For example, at the Executive Committee meeting in February 1943, the committee discussed new contracts for Richmond, Cincinnati, Bluefield and Atlanta, the possibility of expansion by the addition of plants in the Carolinas, New England, Upper New York State, Detroit and St. Paul, and the possibility of the Kansas City licensee relinquishing certain counties to the Des Moines licensee. [GX 52, pp. 3–1955–56, R. 398]

99. In May 1944, president Haas wrote to Brody asking for a list of the counties that go to the Buffalo territory, so that Haas could let the Pittsburgh licensee know what Haas (Sealy) was willing to do. [GX 148, R. 586] Haas repeated his request a week later and also asked for "a breakdown of all unsold territory" to have on file in Memphis. [GX 149, R. 586] On May 17, 1944, Brody sent Haas a list of counties in the Buffalo territory as it was "assigned by Sealy originally to the Otis Buffalo Company of Buffalo, New York, when they were under contract to Sealy." [GX 150, R. 586] On May 23, 1944, Brody sent Haas a "recapitulation of every open Sealy territory," including the following: Philadelphia territory; proposed Charlotte, N.C., territory; eastern New York State Sealy territory; proposed Oklahoma territory; Minneapolis, St. Paul territory; proposed Mexico territory; and four Canadian territories by Provinces instead of Counties. [GX 151, R. 587]

100. In a meeting in July 1947, the Board of Directors approved a contract with the U.S. Bedding Co., the Memphis licensee, for the Dallas, Texas, and Oklahoma territory. The Board also decided that the state of Arizona and the area around El Paso, Texas, should be combined as a separate territory. The Board also discussed an application for the Minneapolis territory and the fact that the Kansas City licensee had sold its bedding business to a new company, for which a contract was being prepared. [GX 58(960), pp. 3–1679–82, R. 428]

101. On September 21, 1948, J. R. Lawrence, of Sealy, wrote to Ross S. Rosenberg, Sanitary Bedding Co., St. Paul, Minnesota, advising him that the executive committee of Sealy had accepted his application for a franchise in the Minneapolis territory, and that his contract would start January 1, 1949, on a straight royalty basis. Lawrence outlined the territory allocated "under this franchise," calling attention to those counties around the borders of the territory, in states mostly within the territory, but which counties were already franchised to other Sealy licensees and were, therefore, excluded from this territory. [GX 186, R. 666]

102. On August , 1950, the Portland licensee wrote to Sealy, stating that it had been developing trade in the Alaskan Territory for several years since advised that it could do so by J. R. Haas; the licensee asked that this territory be added to its contract because "we are expending funds and efforts to develop the business in that territory." [GX 246, R. 806] On August 21, 1950, E. H. Bergmann responded to the Portland licensee and said that with Alaska seeking statehood, some day "it may, within itself, be able to support a full licenseeship possibly not without a plant but the status of a licenseeship

on the part of who ever may be handling it for Sealy." Bergmann said that the way to handle Alaska was to give the Portland licensee a separate contract for Alaska with a low minimum royalty for the first three years, and then determine the value of the territory when the contract comes up for renewal. [GX 247, R. 806; see GX 248, R. 807]

103. On January 16, 1951, the Richmond licensee wrote to J. R. Lawrence, acknowledging notice that the Maryland Bedding Company, Baltimore, Maryland, had taken on the Sealy franchise as of January 1, 1951. The Richmond licensee said:

> "Frankly, I am pleased that you have a licensee in Washington and Baltimore and I hope that they will do a good advertising business in this area. If so, they will eventually be helpful to the Richmond factory." [GX 266, R. 818]

104. At a meeting of the Board of Directors in March 1951, E. H. Bergmann introduced Irving Fisher of the Fisher Products Company, Chester, Pennsylvania, and stated that Fisher was seeking a license agreement in the Philadelphia area. J. R. Lawrence outlined "his negotiations with Mr. Fisher and a report of his trip to Chester, Pennsylvania. Mr. Fisher gave an outline of his intended handling of the Sealy franchise in that area and after answering questions of the Board members was excused from the meeting." A motion was made and passed that the Fisher Company be granted a contract for the Philadelphia area, "details in regard to territory arrangements, etc., be worked out by Sealy officials." [GX 69, pp. 3-1644-45, R. 490]

105. On March 27, 1951, E. H. Bergmann wrote to T. C. Engelhardt, the Reading, Pennsylvania, licensee, as follows:

"We have a licensee interested in taking on the Philadelphia territory and in order to round out a territory for him that will fit into his present operations it is going to be necessary for us to give him the county in New Jersey which embraces the City of Trenton from the present Passaic contract.

"In order that we may tie into this county correctly and give him a straight run to Trenton I want to include in his territory two counties which have been serviced by the Reading plant during the past. These two counties are Montgomery and Buck.

"I am pleased to have you tell me that you felt that it would be possible for this change in the territory to be worked out with Philadelphia and I would appreciate having you write me and advise me that you have no objection to the placing of these two counties in the new proposed Philadelphia licenseeship." [GX 279, R. 840]

E. H. Bergmann wrote to the Reading licensee again on April 13, 1951, repeating that:

"What I want to do is to give the entire Montgomery and Buck counties to Philadelphia so as to round out their territory and I wish you would govern yourself accordingly. I am quite sure that these few little towns will not make too much difference to you and it is going to make a tremendous difference to me and to Philadelphia to get them started with a full complement of territory." [GX 280, R. 842]

Sealy assigned certain additional counties to the Reading licensee, and on May 23, 1951, Bergmann wrote to Engelhardt, saying that he was happy to include these counties as part of the Reading territory, and Bergmann thought that they would "more than justify the exclusion of the few cities that you have covered in Montgomery and Bucks counties." [GX 281, R.

844] On May 7, 1951, Bergmann wrote to the Chester licensee, stating that he was "not in a position to guarantee to you that I can amend the contract at this time to include Montgomery and Buck counties." However, Bergmann said that he had written a letter to Reading calling that licensee's attention

> "to the fact that inasmuch as they have not objected to my letter to them stating that it was my desire to include these two counties in your contract that I assumed they were willing to cooperate and that I was issuing their new contract on that basis. I have every reason to believe that Ted Engelhardt is going to be perfectly willing to go along on that basis, but I don't want to definitely promise you the contract until I have his verbal or written okay." [GX 285, R. 850]

106. On July 10, 1953, J. R. Lawrence wrote to E. H. Bergmann regarding certain counties being added to the Reading and Pittsburgh contracts. Lawrence said

> "This takes care of all the open counties in Pennsylvania with the exception of Susquehanna. I believe it was your intention to have all the open counties covered by some plant, and I will appreciate it if you will let me know in whose area you would want Susquehanna. As I see the map, you have two possibilities, one the Rochester plant and the other the Reading plant." [GX 345, p. 3–5058, R. 960]

Bergmann responded on July 23, stating that Susquehanna should go in Ted Engelhardt's territory [Reading licensee]; Bergmann doubted whether the Rochester licensee would do much with that county because "it is quite a ways from their plant," and so he assigned it to the Reading territory. [GX 345, p. 3–5057, R. 960]

107. In September and October 1955, E. H. Bergmann corresponded with H. B. Fouts, the Des Moines licensee, regarding a request that Des Moines relinquish some territory to be combined with certain territory that would be relinquished by the Chicago licensee in order to work out a franchise for a Davenport company. Fouts stated that the Des Moines licensee would not consider giving up any part of its territory; he said that:

> "there was a time when we were not too interested in the city of Davenport itself, but times have changed, we have completely reorganized our sales force, and we have spent considerable time and money in Davenport and the adjoining territory. As a result, our business has improved greatly. That being the case, we would not for one minute even consider giving up Davenport to anyone, let alone a new licensee." [GX 377, R. 1016]

Fouts raised the question why the Davenport Bedding Company was suddenly interested in a Sealy franchise; and he suggested that the reason might be that the company was seeking the advantage of the name Sealy to help it sell private brand merchandise in contiguous territories. Bergmann responded that the matter was now closed, but in answer to Fouts' question, he said that he had been "trying to contact the Davenport Bedding Company in the right way for over six months. Actually we went to them, they did not seek a Sealy licenseeship." [GX 376, R. 1015; GX 377, R. 1016; GX 378, R. 1021]

108. In a letter to the Rochester, New York, licensee, dated May 11, 1956, E. H. Bergmann wrote about a discussion that had arisen at a Board meeting relating to the recommendations of a management consulting firm "concerning the realinement of territories in order to obtain complete coverage. It

was pointed out that many licensees are not exploiting all their territory, and an effort should be made to have them relinquish such territory that they are not utilizing to the fullest possible extent." The Board of Directors had decided that the Sealy executive office should:

> "Set up machinery to work with all licensees not presently achieving 80% of par in all major divisions of their territory in order to either (A. offer every assistance to such licensee to enable such licensee to bring about such better development,) or (B. obtain *voluntary relinquishment* of the undeveloped territory for realinement,) and (C. to make a semi-annual report to the Executive Committee of the Board disclosing the progress resulting from such efforts, and all legal steps be taken to continue and implement the program so as to bring about complete nationwide development)." [GX 383, R. 1028]

109. The position of Sealy vis-a-vis each licensee was further discussed in a letter from E. H. Bergmann to the Louisville licensee, dated June 4, 1956, relating to the possibility of certain territorial adjustments for the benefit of the Louisville licensee, which the licensee felt would also work to the advantage of Sealy. Mr. Bergmann stated that the licensee's request, which he was unable to grant, related to:

> "a subject of which this office is constantly aware, namely, the realinement of territories between contiguous plants for the over-all betterment of the national picture, the specific improvement of one plant, the avoidance of any harm or penalty to the plan being asked to cooperate with the national office in facing up to the realistic facts concerning sales performances.

"Unfortunately, all territories are under contract which requires voluntary acquiescence to any suggestions of relinement. This writer over a period of years has found this to be a most difficult problem. * * * We work constantly at the problem, and it is surprising how many little adjustments of a county or two are made each year because of the gentle negotiations going on at all times to improve the national position with no particular harm to any one individual operating unit." [GX 385, R. 1035; see also, GX 384, R. 1032]

E. *Termination of Licenses*

110. At the Board of Directors Meeting in November 1938, a letter from the Philadelphia licensee was read. A motion was made and passed that "Sealy cooperate with the Philadelphia plant, in view of their apparent sincerity, accepting their stock in part liquidation of their account, with a minimum of $100.00 per month subject to change upon notice by the Board with the understanding that a definite arrangement will be made by Philadelphia for paying up its arrears." At this meeting, president Wolf also informed the Board that "the St. Paul contract had been terminated, upon request of the St. Paul plant, and that this organization therefore was no longer part of the Sealy group." [GX 601, pp. 3-6957-58, R. 1391]

111. At a meeting of the Executive Committee in April 1940, a motion was made and passed that Sealy "accept cancellation of the contract between Sealy, Incorporated and the Sealy Mattress Company at Philadelphia, Pennsylvania." President Haas was instructed "to effect a settlement from Philadelphia to cover obligations due Sealy." [GX 48(615), pp. 3-1877-78, R. 370]

112. At a meeting of the Executive Committee in June 1940, president Haas notified the committee that he executed on behalf of Sealy "a termination of the contract between Sealy, Incorporated, and the Sealy Mattress Company of Tigard, Oregon, in line with the request of Mr. M. P. Cady of Tigard." All obligations of the Tigard licensee to Sealy had been settled in full. The termination was conditioned upon Sealy's acceptance as a licensee of the Pettit Feather Bedding Company of Portland, Oregon, which would absorb the Sealy Mattress Company of Tigard. At the same meeting, Haas notified the executive committee that he had executed a license contract between Sealy and Pettit. [GX 49, p. 3–1888, R. 383]

113. At the Executive Committee meeting in May 1947, the Milwaukee licensee announced that its stockholders had agreed to sell the company to the Sealy Mattress Company of Illinois, the Chicago licensee. A motion was made and passed, with M. A. Kaplan, of the Chicago licensee, not voting, that Sealy consent to a transfer of the Milwaukee franchise to the Chicago licensee. [GX 57(959), pp. 3–1673–74, R. 414]

114. At the meeting of the Executive Committee in May 1947, J. R. Haas "made a report regarding his negotiations with the Kansas City and Fall River Licensees. He stated that neither of the present Licensees were doing a first class job, and had given each of them until June 1, 1947, to make a showing, and if such showing was not satisfactory to him, he thought that new licensees should be appointed." A motion was made and passed authorizing Haas to handle the question of continuing these licensees or appointing new licensees. [GX 57, p. 3–1676, R. 414] At a meeting of the Board of Directors in July 1947,

J. M. Brody, speaking on Sealy sales and prospects, "called attention to the fact that Sealy had a new Licensee at Kansas City"; Brody spoke highly of the new licensee and said that he expected that Sealy would have a very strong situation in this territory. [GX 58(960), pp. 3–1679, 1682, R. 428]

115. At a meeting of the Board of Directors in June 1950, E. H. Bergmann reported that the Charles A. Maish Company of Cincinnati "had decided not to sign the agreement tendered to them at the direction of the last meeting of the Board and that the working arrangement with the Charles A. Maish Company would terminate on June 15." A motion was made and passed that the open territory be serviced by the neighboring plants "on a temporary basis until new licensees are located for the area." [GX 66, pp. 3–1849–50, R. 474; see also GX 250, R. 812, in which Sealy states, on November 8, 1950, that the Maish Company "has closed their plant because of labor and management difficulty;" see GX 245, R. 804; GX 250–65, R. 812, 817]

116. At a meeting of the Board of Directors in September 1950, the Board approved the minutes of the Executive Committee meeting of August 1950, except that the Board further discussed the franchise of the American Bedding Company of Charlotte, North Carolina. E. H. Bergmann gave the details concerning the change in ownership of the Charlotte licensee, and J. R. Lawrence provided information regarding sales figures and performance of the licensee. A motion was made and passed that the license contract be continued with the new owners. [GX 67 (625), p. 3–1853, R. 479]

117. At a meeting of the Board of Directors in September 1952, a discussion arose as to the renewal of the license contract of American Bedding Com-

pany, of Charlotte, North Carolina. W. L. Harris, of the Charlotte licensee, spoke about the accomplishments of his company under the Sealy franchise, answered questions pertaining to the management and operation of the company, and requested renewal of the contract. Harris was excused from the meeting, and a motion was made and passed that the manufacturing facilities and sales effort of the licensee were deemed inadequate, and the licensee was not entitled to a renewal. As required by the license contract, this motion received a two-thirds vote. The motion contained the following introductory clause:

> "from the report of the officers of Sealy, Incorporated it is apparent that the manufacturing facilities and sales effort of the American Bedding Company are insufficient to meet the requirements of Sealy, Incorporated in the territory covered by the license to the American Bedding Company, and that such manufacturing facilities and sales effort have not been improved during the license period, which began October 1, 1949, and ends September 30, 1952." [GX 632, pp. 3–1585–86, R. 1477]

118. At a meeting of the Board of Directors in November 1956, the Board was "appraised of the problems which had been encountered in connection with the Orlando plant, beginning in June, 1956, and continuing to their termination by purchase of the plant by the corporation on September 7, 1956." [GX 82(984), p. 3–1348, R. 541]

119. Plaintiff's evidence, read as a whole, conclusively proves that the Sealy licensing arrangements were developed in the early 1920's for entirely legitimate business purposes, including royalty income to Sugar Land Industries, which owned the Sealy name, trademarks and patents, and the benefits to licensees of joint purchasing, research, engineering, advertising

and merchandising. These objectives were carried out by successor companies, including defendant, whose activities have been directed not toward market division among licensees but toward obtaining additional licensees and more intensive sales coverage.

V. RETAIL PRICE FIXING BY CO-CONSPIRATOR STOCKHOLDER-LICENSEES WITH SEALY, INC. AND ITS PREDECESSOR, SEALY CORPORATION

120. At the sixth semiannual general convention of the Sealy member factories in January 1925, the member factory representatives agreed upon and set the advertised retail price of two Sealy matresses (GX 10 [alias of GX 1]; Tr. 108–124, 181; Doc. 3–7091).

121. In January and June 1927, the stockholder-licensee representatives at the semiannual conventions of Sealy, Inc. discussed and agreed to maintain the resale price on the Sealy tuftless mattresses (GX 12–13; Tr. 187–190, 193–193; Doc. 3–7150, 3–7160).

122. Acting as the Executive Committee of Sealy Corporation in November 1927, the member factory representatives agreed upon the resale price for seven Sealy products (GX 14 [alias of GX 5]; Tr. 196; Doc. 3–7054).

123. At the eleventh semiannual convention of Sealy Corporation in January 1928, the twenty member factory representatives present decided upon the resale prices for seven Sealy products (GX 15 [alias of GX 6]; Tr. 203–204; Doc. 3–7169.

124. At the Sealy convention in January 1931, fourteen member factory representatives discussed and set the retail prices for various Sealy products (GX 17; Tr. 208–212; Doc. 3–7188, 3–7189).

125. Acting as the Executive Committee of Sealy Corporation, in December 1932, the stockholder-licensee representatives "agreed upon" and set the

resale prices for eight Sealy products (GX 19; Tr. 223–225; Doc. 3–7220 to 3–7222).

126. The Executive Committee of Sealy Corporation, consisting of the stockholder-licensee representatives, in July 1933, agreed that no cut prices were to be made on any of the articles advertised in national magazines. The minutes of the meeting interpret that agreement to mean that no cut price could be made without general authorization of the group and then only on a uniform basis throughout the United States (GX 20; Tr. 226–227; Doc. 3–7227 to 3–7229).

127. All of the stockholder-licensee representatives in July 1935 were of the decided opinion that uniform names and retail prices should be adopted, and therefore agreed upon uniform names and set uniform retail prices for various Sealy products (GX 593; Tr. 1359–1361; Doc. 3–7245).

128. Acting as the directors and officers of Sealy, Inc. in June 1936, the stockholder-licensee representatives unanimously agreed that $19.75 would be set as the lowest advertised retail price on any Sealy mattress (GX 594; Tr. 1361–1363).

129. Acting as the Executive Committee of Sealy, Inc., the stockholder-licensee representatives in March 1937 changed and placed into effect the resale prices on three Sealy products. At that meeting letters were read from the Houston and Los Angeles licensee-members requesting permission to offer Sealy innerspring mattresses at less than the minimum resale price ($19.75) established by Sealy, Inc. The stockholder-licensee representatives agreed that the Houston and Los Angeles licensee-members should be advised that Sealy could not make any exception to the general ruling (GX 595; Tr. 1366–1369; Doc. 3–6772, 3–6775).

130. The stockholder-licensee representatives acting as the Executive Committee of Sealy, Inc. in May

1937, agreed that 125 percent would be the maximum markup on Sealy goods in place of the 100 percent markup previously set, this 125 percent markup to be based on the standard wholesale price. They further agreed "that all Sealy plants be compelled to adhere to *all established Sealy prices,* unless permission to the contrary was officially granted by Sealy, Incorporated" (emphasis supplied) (GX 596; Tr. 1373–1374; Doc. 3–6777, 3–6779).

131. The Executive Committee, comprised of the stockholder-licensee representatives, in May 1937 agreed that the Texas and Kansas City licensee-members be permitted to offer the Sealy tuftless mattress at $39.50 resale due to the conditions existent in those localities (GX 596; Tr. 1374; Doc. 3–6779).

132. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives on July 1, 1937, agreed upon and set the minimum retail price on the Sealy tuftless mattress run singly or in combination with other items. They further agreed that the Sealy member factories should be permitted to run a special promotion during February and August if they so desired, during which the maximum markup would be increased to 160 percent instead of the usual 125 percent (GX 597; Tr. 1377; Doc. 3–6788, 3–6789).

133. At the meeting of the stockholder-licensees of Sealy, Inc. in July 1937, Mr. J. R. Haas, the Memphis stockholder-licensee representative and the vice president of Sealy, Inc. at that time, made the announcement that the Sealy tuftless mattress had been removed from the standard Sealy line and could be offered under a class label with the understanding that the resale price would not be less than $39.50 (GX 598; Tr. 1379; Doc. 3–6806).

134. At the August 1937 meeting of the Executive

Committee of Sealy, Inc., which committee consisted of stockholder-licensee representatives, Mr. John B. Brody made a presentation concerning the Crestline brand and a copy of his report was made a part of the minutes of the meeting. The report stated that upon the adoption by the Sealy stockholder-licensees of an off brand for merchandising by Sealy stockholder-licensees, Messrs. Brody and Englehardt would submit their recommendations for effective handling of this off brand for Executive Committee approval. Point 5 of the ten-point report is entitled "Control of Resale Prices." Under point 5, Messrs. Brody and Englehardt suggested that the control of the resale prices, as set by the stockholder-licensees of Sealy, Incorporated at the last national meeting, be established by the Executive Committee in line with the unanimous agreement of the stockholder-licensees. The control referred to is that of a limitation in markup on wholesale cost to a maximum figure of 200 percent. This recommendation was adopted by the stockholder-licensee representatives present (GX 599; Tr. 1384–1385; Doc. 3–6810, 3–6814 to 3–6819).

135. Acting as the Executive Committee, the stockholder-licensee representatives in August 1937 agreed that the Sealy tuftless mattress would be reinstated to the standard Sealy line with the understanding that the garnetted Tuftless could be sold at $39.50 under a class label, but the air woven Tuftless was to be sold under the standard label at $49.50 (GX 599; Tr. 1385–1386; Doc. 3–6820).

136. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in October 1937, agreed that a new mattress should be added to the Sealy line, with practically the same specifications as the Fast Asleep, and to sell at $19.75 resale, and that the Truease mattress would be sold at $24.75

retail (GX 600; Tr. 1389–1390; Doc. 3–6834, 3–6839).

137. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives on November 12, 1937, agreed upon and set the price of the Sealy Tuftless mattress and further that the new Truease mattress would be made to the present specifications of the present Sleep Charm with this new Sealy Truease to retail at $24.75 (GX 602; Tr. 1395–1397; Doc. 3–6845).

138. The official rulings of the Executive Committee of Sealy, Inc., which was comprised of the stockholder-licensee representatives, for the year 1937, record that:

> (a) A new mattress was to be added to the Sealy line with Fastasleep specifications to sell at $19.75 resale;
>
> (b) The garnetted Tuftless was to retail at $39.50, the air woven Tuftless at $49.50, and the Sealy Tuftless was to be reinstated to standard Sealy line at $39.50; and
>
> (c) The name Sleep Joy was to be confined to the $39.50 bracket.

These official rulings were formally approved by the stockholder-licensee representatives at the Sealy annual meeting held on December 6, 1937 (GX 603, 604; Tr. 1398–1399, 1401; Doc. 3–6852, 3–6853, 3–6857).

139. At the meeting of the board of directors of Sealy, Inc. on November 4, 1938, the president, Harry E. Wolf, who was also a representative of the Pittsburgh stockholder-licensee, questioned the stockholder-licensee representatives comprising the board of directors as to their wishes with regard to the maintenance of a $19.75 Sealy minimum price and following considerable discussion, the matter was put to a vote. The majority of the stockholder-licensee representatives favored the retention of the minimum price. Facts presented at the stockholder-licensee meeting the following day also favored the re-

tention of the minimum price (GX 601; Tr. 1391–1392; Doc. 3–6955, 3–6956).

140. The minutes of the Sealy, Inc. Executive Committee meeting of April 26, 1938, record that stockholder-licensee representatives Louis Haas and Joe Rogers agreed to discontinue advertising the Sealy Rest at $39.50 and to replace all floor samples of the Sealy Rest with samples of the Sealy Kraft at $39.50 (GX 605; Tr. 1403–1404; Doc. 3–6914).

141. The stockholder-licensee representatives at the Executive Committee meeting on April 26, 1938, agreed upon and set the price for the Sealy Fast-asleep and agreed upon and set the new minimum price for Sealy products at $19.75 (GX 605; Tr. 1405; Doc. 3–6917).

142. At the meeting of the board of directors of Sealy, Inc., in June 1938, the stockholder-licensee representatives present heard the official rulings of the acting president and the Executive Committee. These rulings stated (1) the minimum Sealy price was then established at $19.75 instead of $19.95, (2) the new resale price of the Super Sealy Rest was then established at $49.50, (3) a slight variation was permissible in the wholesale price of promotional Sealy products but not in the resale price, (4) it was permissible for dealers to make an allowance on promotional products, such as a $5.00 trade-in allowance, provided the established $19.75 minimum retail price was maintained. The stockholder-licensee representatives changed the official ruling dealing with permissible allowances to provide that an allowance was permissible with the understanding the established $19.75 minimum retail price *must be* maintained (GX 606; Tr. 1408–1409; Doc. 3–6933, 3–6934, 3–6936).

143. The stockholder-licensee representatives, at the board of directors meeting in June 1938, decided

that the New York licensee-member and any other licensee-members desiring to do so would be granted permission to sell a Posture Pillow mattress with Nukraft center at a price of $39.50. They further agreed that the $19.75 minimum retail price would be retained (GX 606; Tr. 1410; Doc. 3–6946, 3–6948).

144. The stockholder-licensee representatives, at the meeting of the Executive Committee of Sealy, Inc. on November 9, 1938, agreed that the stockholder-licensees should be granted permission to manufacture the Super Sealy Rest in Posture Pillow design to retail at $49.50 (GX 607; Tr. 1412–1413; Doc. 3–6993).

145. Acting as the Executive Committee of Sealy, Inc., the stockholder-licensee representatives in November and December 1938, changed, agreed upon, and set the retail prices on various Sealy products (GX 609; Tr. 1418–1419; Doc. 3–7002, 3–7003).

146. The stockholder-licensee representatives at the meeting of the Executive Committee of Sealy, Inc. in January 1939, decided that on all future Sealy promotions a markup of 80 percent (40 percent on sales) must be maintained for the dealers (GX 610; Tr. 1420; Doc. 3–3138).

147. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives in May 1939, decided that Sealy, Inc. would adopt a hair top mattress to be called "The Prize Winner" which would carry a comparative of $29.50 and would sell at $19.95. They further agreed upon and set a new minimum retail price on a particular Sealy mattress along with the plans for merchandising it (GX 611; Tr. 1422–1424; Doc. 3–3149 to 3–3152).

148. At the Sealy, Inc. stockholder-licensee meeting in May 1939, a change in policy with regard to Sealy's minimum resale prices was announced (GX 612; Tr. 1425–1426; Doc. 3–3167).

149. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc., in November 1939, decided that J. R. Haas, the Memphis stockholder-licensee, would prepare specifications for studio couches and bed divans for sale in suggested resale prices (GX 613; Tr. 1430; Doc. 3-3204).

150. The stockholder-licensee representatives, at the Sealy, Inc. Executive Committee meeting on April 26, 1940, unanimously agreed upon and set a new resale price for the Sealy Rest Mattress (GX 615; Tr. 1434-1435; Doc. 3-1882).

151. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in April 1940, gave consent to the Sealy Mattress Company of Memphis to sell Sealy mattresses to Montgomery Ward & Company within its own area, provided such sales made by Montgomery Ward & Company were handled through normal retail outlets at the agreed upon and set standard Sealy retail prices (GX 616; Tr. 1436; Doc. 3-1887).

152. The stockholder-licensee representatives, at the Sealy, Inc. Executive Committee meeting in February 1948, decided that two alternate names could be used by the Sealy stockholder-licensees for each of the regular resale mattresses subject to the provisions that:

(a) In no case could a Sealy item be advertised below $29.95;

(b) Under no circumstances was there to be any preticketing of the alternate name item by the stockholder-licensee; and

(c) Under no circumstances was the stockholder-licensee to allow a price comparative to be used by the retail advertisers.

They further agreed upon and set the suggested national resale price for the Cotton Boll innerspring

mattresses (GX 619; Tr. 1443–1444; Doc. 3–1713 to 3–1715).

153. At the meeting of the Sealy, Inc. Executive Committee in May 1949, the president, E. H. Bergmann, who was also the general manager of the Cleveland stockholder-licensee at that time, suggested a reduction in the minimum advertised retail price of Sealy merchandise. The committee agreed that the Sealy stockholder-licensees so desiring would be permitted to allow their dealers to advertise Sealy merchandise as low as $24.75 (GX 620; Tr. 1446–1447; Doc. 3–1805).

154. The stockholder-licensee representatives present at the Sealy, Inc. Executive Committee meeting in September 1949, adopted ticketing selections for the Sealy resale line and agreed upon and set the retail prices thereon (GX 621; Tr. 1448; Doc. 3–1817).

155. E. H. Bergmann, the president of Sealy, Inc., presented his thoughts concerning the establishment of a $39.50 rubber topper innnerspring promotion to the stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in November 1949. The directors after detailed discussion decided to submit the idea to the stockholder-licensees at the annual meeting which was to be held immediately following the meeting of the board of directors (GX 622; Tr. 1451; Doc. 3–1827).

156. The stockholder-licensee representative acting as the Executive Committee of Sealy, Inc. in December 1949, after a general discussion on the establishment of minimum prices for Sealy sleep lounges, agreed upon and set the minimum resale price for Sealy sleep lounges (GX 623; Tr. 1453; Doc. 3–1832).

157. In August 1950, the stockholder-licensee representatives at a meeting of the Sealy, Inc. Executive

Committee decided after some discussion that new specifications should be issued for various Sealy products. They further agreed upon and set the retail prices for various other Sealy products (GX 624; Tr. 1455–1456; Doc. 3–1851).

158. Acting as the board of directors of Sealy, Inc., the stockholder-licensee representatives in September and November 1950 discussed the resale prices of Sealy mattresses and box springs, and agreed upon and set the resale prices for nationally advertised Sealy products. They further agreed in September 1950 that the individual stockholder-licensees could decide whether or not to establish the resale prices prior to the effective date (GX 625–626; Tr. 1458–1461; Doc. 3–1856, 3–1863).

159. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in January 1951 discussed the resale prices of Sealy items and agreed upon and set the resale prices on five Sealy products (GX 627; Tr. 1461–1463; Doc. 3–1653).

160. At the meeting of the Sealy, Inc. board of directors in September 1951, there was a general discussion on the national resale prices on Sealy mattresses and box springs. After various stockholder-licensee representatives gave their manufacturing costs on each item and after analyzing such costs, the stockholder-licensee representatives decided not to recommend a reduction in resale prices (GX 628; Tr. 1468–1469; Doc. 3–1629).

161. In November 1951, the stockholder-licensee representatives at the Sealy, Inc. board of directors meeting discussed the advisability of retaining the present resale price of the Sealy Posturepedic Firm-O-Rest mattress. This matter was put to a vote by the stockholder-licensee representatives acting as the board of directors. After the vote, E. H. Bergmann,

the then president, stated that inasmuch as the majority of the board of directors favored the retention of the $79.50 price it would be so ordered. At the Sealy, Inc. stockholder-licensee meeting on November 11, 1951, this decision was announced (GX 629–630; Tr. 1470, 1472; Doc. 3–1611, 3–1621).

162. The stockholder-licensee representatives acting as the Executive Committee of Sealy, Inc. in August 1952, reviewed the comparative sales figures of Posturepedic mattresses for the first half of 1951 and 1952 and decided to maintain the existing resale price of the Posturepedic mattress. They further decided to have Mr. Bergmann prepare a resolution for submission to the board of directors which would make it mandatory that all resale prices for the Posturepedic be the same at all points upon notice from Sealy (GX 631; Tr. 1474–1476; Doc. 3–1591, 3–1592).

163. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting on September 18, 1952, adopted the following resolution:

> Whereas compliance by licensees on all specifications established by the board of directors is the essence of the protection afforded by the trade marks of Sealy,
>
> Now therefore, be it resolved that the failure by any licensees to comply with each and every item of the specifications established from time to time, including the minimum resale prices set up for the various Sealy products, shall be deemed to be harmfully and injuriously damaging to the Sealy trademarks and to the products sold thereunder.

They further discussed the advisability of changing the resale price of the children's Pos repedic mattress and agreed that no change should be made. In October 1952, the resolution passed at this meeting was disseminated to the licensee-members through the

issuance of Sealy Policy Bulletin No. 12, dated October 7, 1952, which also contained the listing of the then established resale prices (GX 632, 743; Tr. 1478–1479, 1723–1725; Doc. 3–701, 3–1584, 3–1585).

164. The stockholder-licensee representatives, acting as the board of directors of Sealy, Inc. in January 1953, agreed upon and set the resale prices for various Sealy products (GX 633; Tr. 1483; Doc. 3–1556).

165. At the meeting of the board of directors of Sealy, Inc. held March 19, 1953, in Los Angeles, California, E. H. Bergmann, brought up the possibility of increasing the ending price of the resale brackets from 50 cents to 75 cents. The stockholder-licensee representatives present expressed their opinion and after discussion agreed that no change should be attempted (GX 634; Tr. 1484–1485; Doc. 3–1551).

166. The stockholder-licensee representatives at the Sealy, Inc. board of directors meeting in March 1953, discussed the establishment of the Baby Posturepedic resale price and decided that the Baby Posturepedic should bear a retail tag of $19.95 without the contour sheet and $24.75 with the contour sheet. The decision was changed in June 1953 when the stockholder-licensee representatives acting as the Sealy, Inc. board of directors, unanimously agreed that the Baby Posturepedic should be sold at $24.75 retail, regardless of the type of plastic cover used with the mattress (GX 634–635; Tr. 1485, 1487; Doc. 3–1540, 3–1551).

167. In November 1953, the stockholder-licensee representatives, acting as the board of directors of Sealy, Inc., agreed that the five resale Con-Sealy beds as shown at the stockholder-licensee meeting should be adopted and agreed upon and set the retail prices thereon. They further agreed upon and set the minimum advertised prices of certain of these Sealy products (GX 636; Tr. 1488–1489; Doc. 3–1530.

168. At the meeting of the Sealy, Inc. board of directors on May 10, 1954, it was called to the attention of the stockholder-licensee representatives that there was a 50 cents differential in the retail price of the Posturepedic innerspring mattress and foundation set as compared to the Foam Rubber Posturepedic set. The stockholder-licensee representatives recommended, for the sake of uniformity, that the price of the Posturepedic Foam Rubber set should be the same as the Posturepedic innerspring set. They further expressed their opposition to dropping the Sealy Rest name to a $59.50 level (GX 639; Tr. 1494–1495; Doc. 3-1505, 3–1506).

169. The stockholder-licensee representatives at the Sealy, Inc. Executive Committee meeting on March 2, 1955, thoroughly reviewed the complete fair trade program as related to Sealy's national resale items. They decided that a definite fair trade program should be set up; that it should be submitted to the respective stockholder-licensees; and that the program would be sponsored by trade paper ads run by Sealy, Inc. They also reviewed the matter of minimum prices and agreed upon and set minimum prices for various Sealy products (GX 641; Tr. 1501–1502; Doc. 3–1458, 3–1459.)

170. The stockholder-licensee representatives, acting as the Sealy, Inc. board of directors in April 1955, reviewed the prices set at the Executive Committee meeting in March 1955 and agreed on the minimum prices set by the Executive Committee with the addition that the minimum price on the Con-Sealy bed with the Posturepedic mattress should be established at $199.50 (GX 642; Tr. 1503–1504; Doc. 3–1440).

171. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in August

1955, approved the creation of a Firm-O-Rest foam outfit to sell for $129.50; approved the creation of a Foam Rubber Anniversary outfit with the price per set to be $99.50; and approved an increase of $10.00 for each of the resale Redi-Bed and Con-Sealy beds (GX 643, Tr. 1507–1509; Doc. 3–1419, 3–1420).

172. At the Sealy, Inc. Executive Committee meeting in June 1956, the stockholder-licensee representatives adopted the following resolution:

> RESOLVED: That the general policy heretofore established by the Board of Directors, of limiting comparatives not to exceed one-third off, be abated for the 1957 Anniversary Program permitting promotion of a $69.50 item at a sale price of $44.50.

After a lengthy discussion as to whether or not this $44.50 price was sound, those present agreed that the price of $44.50 should be set (GX 646; Tr. 1516–1517; Doc. 3–1371).

173. In August 1956, the stockholder-licensee representatives, acting as the Sealy, Inc. board of directors, agreed that no price comparison should ever be used on the Posturepedic. They further agree to maintain the existing resale prices on Sealy mattresses and foundations (GX 647; Tr. 1519–1520; Doc. 3–1359, 3–1360).

174. The stockholder-licensee representatives, acting as the Executive Committee of Sealy, Inc. in January and February 1957, agreed upon and set the minimum prices on various Sealy products. They further agreed after discussion that 125 percent of the invoiced wholesale price be the maximum markup allowed for preticketed non-promotional items (GX 648; Tr. 1521; Doc. 3–1337).

175. From time to time the stockholder-licensee representatives served on the Advertising and Mer-

chandising Committee of Sealy, Inc. and the Upholstery Committee of Sealy, Inc. These committees discussed and made recommendations as to (a) the retail prices to be set on Sealy products, (b) the minimum retail prices to be used on Sealy products, (c) the advertising and merchandising of those products, (d) the various promotions to be run on Sealy products and the retail prices to be in effect during those promotions, and (e) new products to be manufactured and promoted by the stockholder-licensees (GX 651, 653–656, 658–659, 664–665; Tr. 1532, 1539, 1542–1543, 1546–1547, 1551–1552, 1559–1562, 1564–1565, 1593, 1595–1596).

176. The minutes of the meeting of the Sales Managers Committee of Sealy, Inc. held May 3, 1956, attended by the stockholder-licensee representatives from Baltimore, Cleveland, Detroit, Des Moines, and Chicago, and two members of the staff of Sealy, Inc., record (a) a suggestion that they lower the quality of their $39.95 mattress, raise the price of their $39.95 specifications to $44.50, advertise both in the ad, and they did not favor the idea; (b) they felt it was absolutely necessary to raise the retail price of the 1957 anniversary promotion to $44.50 or $44.95; (c) a suggestion that they take a $69.50 resale number, such as the Sealy Rest or Sleep Joy, and reduce it to $44.50; and (d) that the reduction referred to in (c) above would have to be approved by the board of directors before such a plan could be finalized (GX 657; Tr. 1554–1556; Doc. 3–6098, 3–6099).

177. A few days prior to February 13, 1953, Sealy, Inc. issued a bulletin to all the stockholder-licensees stating that the resale prices of the Sealy resale line would move from the 50 cent bracket to the 75 cent bracket. On February 13, 1953, Sealy, Inc. issued a bulletin to all stockholder-licensees countermanding

this previous bulletin, as the stockholder-licensee representatives comprising the board of directors had not officially approved the change. This later bulletin stated that the only change in the Sealy resale line agreed upon by the stockholder-licensee representatives on the board of directors is the change in the Sleep Charm price (GX 666; Tr. 1598; Doc. 3–3581).

178. In August 1953, the Chicago stockholder-licensee informed Sealy, Inc. that the Chicago stockholder-licensee was agreeable to selling Gamble-Skogmo Company resale goods based on Gamble-Skogmo Company's agreement to maintain the resale prices on those resale goods (GX 668; Tr. 1599–1600; Doc. 3–3577).

179. In January 1954, the Waterbury stockholder-licensee wrote Sealy, Inc. that since the Waterbury stockholder-licensee had voted for the $199.50 minimum price on Con-Sealy beds, he was happy to receive the Sealy, Inc. bulletin stating that the resale price for the Con-Sealy beds had been set at $199.50. He went on to ask Sealy, Inc. if it were permissible to sell the love seat size Con-Sealy bed at $189.50, thereby maintaining his customary $10.00 differential between the full size and the love seat size as did his competitor Simmons. E. H. Bergmann, writing for Sealy, Inc., replied that Simmons recognized the $10.00 difference in the two sizes and he could "see no reason why we should not do the same also." Mr. Bergmann further stated that he felt the bulletins on minimum resale prices should be revised and he hoped within a short time to send a bulletin to the stockholder-licensee representatives comprising the Executive Committee and elicit their opinion as to the correct minimum prices on all items (GX 669–670; Tr. 1601–1604; Doc. 3–3526, 3–3527).

180. In February 1954, the Chicago stockholder-licensee wrote Mr. Bergmann, the president of Sealy, Inc., that he had mailed a Sealy bulletin, "SP–2," to Roger Lawrence, the executive vice president of Sealy, Inc., but had requested Mr. Lawrence to delay the mailing of the bulletin to the stockholder-licensees until Mr. Bergmann could check with the Executive Committee to see if the $199.50 price for the full size Con-Sealy bed included the Sealy Posturepedic quality mattress because the Chicago stockholder-licensee felt quite certain that it was the consensus of opinion that the Posturepedic mattress be excluded at the $199.50 price. Mr. Bergmann replied (1) that he understood the stockholder-licensee representatives at the board of directors meeting on November 16 had agreed that the minimum price of the Con-Sealy bed was to be $179.50 with a Posturepedic mattress; (2) that a bulletin had been issued to the stockholder-licensee as to their desires of $179.50 or $199.50 and that the vote had been sixteen to three in favor of the $199.50 price; and (3) that he, Mr. Bergmann, would ask each stockholder-licensee member of the Executive Committee to write him as to his wishes and he would be governed by the majority (GX 671–672; Tr. 1605–1606; Doc. 3–3528, 3–3529).

181. In April 1954, E. H. Bergmann, president of Sealy, Inc., requested the Chicago stockholder-licensee to inform him, Bergmann, of his reaction to the difference of 50 cents ($159.00 or $159.50) in the set price between the regular innerspring and foam rubber Posturepedic sets as Bergmann had already heard from three other stockholder-licensee members of the Executive Committee as to this question (GX 675; Tr. 1612; Doc. 3–3677).

182. In March 1955, the president of Sealy, Inc., Mr. Bergmann, wrote the Cleveland stockholder-

licensee that by going back through the minutes of the board of directors meetings until January 1953, he had found that the stockholder-licensee representatives comprising the board of directors had ruled that the prices of the Baby Posturepedic mattress should be $24.95 including the plastic cover and without the cover it could be advertised at $5.00 less, or $19.95, and that they had further ruled that a price of $29.95 should be established for the Youth Posturepedic mattress (GX 679; Tr. 1619–1620; Doc. 3–3576).

183. In June 1955, Sealy, Inc. issued Sealy Bulletin No. 2, revised as of June 30, 1955, to all stockholder-licensees specifying the minimum price at which Sealy merchandise could be advertised at retail. In response to this bulletin, the Baltimore and Schenectady stockholder-licensees wrote Sealy, Inc. questioning the accuracy of the price of Hollywood sets. In August 1955, Mr. Bergmann, president of Sealy, Inc., wrote to five stockholder-licensees on the board of directors asking them to indicate the changes to be made in Sealy Bulletin No. 2. Bergmann stated that upon receipt of the information the bulletin would be revised according to the opinion of the majority. The stockholder-licensee in Chicago, Mr. Kaplan, replied that it was his understanding that the twin or full size sets could be *sold* at not less than $49.50, that the minimum price was $59.50 if the headboard was included, and that if the headboard was advertised separately, the $49.50 minimum price was to be maintained. The stockholder-licensee in Waterbury, Mr. Walzer, replied that he believed the minimum price on a Hollywood outfit was $59.50 (GX 685–686, 688–690; Tr. 1629–1631, 1633–1635, 1637–1638; Doc. 3–3493 to 3–3495, 3–3499, 3–3500).

184. In May 1954, Mr. Bergmann, for Sealy, Inc., wrote the Kansas City stockholder-licensee that he

had had the price of the Posturepedic foam rubber set under discussion with the Executive Committee of Sealy, Inc. which consisted of six stockholder-licensee representatives and they were exactly divided fifty-fifty, as to whether it should be $159.00 or $159.50 per set. Bergmann further stated that he would issue further ruling based on the vote of the stockholder-licensee representatives meeting as the full board of directors of Sealy, Inc. on May 10 (GX 691; Tr. 1640–1641; Doc. 3–3516).

185. In August 1955, E. H. Bergmann, the president of Sealy, Inc., wrote to the stockholder-licensee representatives on the board of directors eliciting their preferences on a new resale price for the Posturepedic foam rubber mattress in an effort to arrive at a quick decision. The ten stockholder-licensees so polled, responded by letter or telegram giving preferences for resale prices. Sealy, Inc. issued Bulletin No. 114 dated August 16, 1955 to all Sealy licensee-members notifying them that the poll of the directors had indicated a large majority were desirous of increasing the retail price of the Posturepedic foam rubber set to $169.50, and requested the licensee-members to advise their dealers of the increase effective August 16, 1955 (GX 692–700, 702–704; Tr. 1641–1647, 1650–1664; Doc. 3–3481 to 3–3490, 3–3492).

186. In March 1956, the Baltimore stockholder-licensee wrote Mr. Bergmann at Sealy, Inc., that his sales of the Posturepedic foam rubber sets had decreased 70 percent since the resale price was raised to $169.50. The Baltimore stockholder-licensee further stated that he hoped to see Baltimore and Sealy, Inc. do something about this just as soon as possible. Mr. Bergmann, president of Sealy, Inc., replied that further action could be considered when the matter be-

came a little more clear (GX 705–706; Tr. 1665–1668; Doc. 3–3446, 3–3447).

187. In May 1956, the Chester stockholder-licensee wrote to E. H. Bergmann at Sealy, Inc. that there should be a quick reversion to the $159.50 resale price on the Posturepedic foam rubber mattress and that immediate remedial steps should be taken if it is deemed advisable by a majority of the licensee-members. Bergmann, for Sealy, Inc., replied that the stockholder-licensee representatives comprising the Executive Committee were unanimous in feeling that it was not necessary at that time to reduce the $159.50 price (GX 707–708; Tr. 1669–1672; Doc. 3–3450, 3–3451).

188. In April 1955, the Rochester stockholder-licensee wrote Sealy, Inc. asking if a Sealy button free mattress could be advertised at $39.50. Mr. Bergmann, president of Sealy, Inc., replied that it could be advertised at that price (GX 710–711; Tr. 1674–1675; Doc. 3–3474, 3–3475).

189. E. H. Bergmann, president of Sealy, Inc., in May 1956, congratulated the Detroit stockholder-licensee for the latter's general mailing to dealers in which the Detroit stockholder-licensee had listed regulations for Sealy approved retail advertising minimums. These regulations provided as follows:

> (a) No innerspring mattress or box spring regardless of exterior finish may be advertised for less than $29.50;
>
> (b) Full size or twin size Hollywood bed outfits (headboard, mattress, box spring or foundation, legs or carrying frames) may not be advertised at less than $59.50 for the complete set;
>
> (c) Redi-Bed sleepers may not be advertised at less than $159.50;
>
> (d) Con-Sealy bed sleepers may not be advertised at less than $199.50;

(e) All resale mattresses and dual sleepers, such as Con-Sealy beds, Posturepedic, Sunspun, Sealy Rest, Firm-O-Rest, Good Homekeeper, and Sleep Charm, may never be advertised for less than the pre-ticketed price for any reason whatsoever;

(f) All other promotional merchandise carrying a maximum comparative not to exceed one-third off the retail price;

(g) The word advertising as applied to the above regulations covers all display and classified linear newspaper advertising, circulars, radio, television, window and wall signs.

The Detroit stockholder-licensee further informed its dealers by a letter dated May 1, 1956, that he "will not be able to service dealers who do not conform to these retail advertising regulations" (GX 712–714; Tr. 1676–1683; Doc. 3–3471, 3–3472, 3–3652, 3–3653).

190. The Memphis stockholder-licensee in May 1956, wrote the Sealy, Inc. president, Mr. Bergmann, that he felt that "a minimum resale price of $39.95 each on a Sealy mattress or box spring should be adhered to" and "on ensembles the minimum price should be $59.95" (GX 715; Tr. 1683–1684; Doc. 3–3654, 3–3655).

191. In August 1956, several stockholder-licensees wrote to Mr. Bergmann, president of Sealy, Inc., expressing their views in regard to the increase in resale prices made by Sealy's competitor Simmons, and their views as to whether Sealy, Inc. ought to raise or maintain the retail price of Sealy Posturepedic mattresses at $79.50. A meeting of the stockholder-licensee representatives comprising the Executive Committee was called and the decision was reached that the $79.50 price of the posturepedic mattress would be maintained. The Orlando licensee-member in October 1956 sent Sealy, Inc. a copy of

its price list and a covering letter which had been mailed to its dealers. The accompanying letter dated October 15, 1956, and addressed to all Sealy dealers, stated that the Orlando licensee-member had concluded that the retail price lines could not be justifiably increased at that time and that he was maintaining the prevailing retail prices. The price list, effective October 15, 1956, specified the resale price of forty Sealy products. The prices on fourteen comparable Sealy products in this list were identical with the resale prices in the Baltimore and Richmond licensee-members' January 15, 1957, price list (GX 724, 726–730, 734–737; Tr. 1692, 1694–1698, 1702–1703, 1711–1716; Doc. 3–3467 to 3–3470, 3–3549, 3–3550).

192. In October 1956, the Schenectady member factory issued specifications for the 76th anniversary sale magazine advertising which stated that the Sealy Natural Rest would be featured and sold at a price of $39.95. In November 1956, Sealy, Inc. sent a "Smart Living Folder" to the licensee members which included a letter signed "Sealy Mattress Companies" to the Smart Living stores containing specifications for the same sale. These specifications provided that the Sealy Natural Rest mattress could not be advertised or sold for less than $39.95. Also included in the folder was a letter signed "Sealy Mattress Companies," written by Gerald C. Shappell, to the Emerson Press submitting specifications for the mailing prices for the 76th anniversary sale, which provided that the Sealy Natural Rest mattress and box spring would be nationally advertised for $39.95 but could not be advertised or *sold* for *less* than $39.95 (GX 731–733; Tr. 1704–1705, 1707–1709; Doc. 3–3537, 3–3544, 3–3545).

193. By stipulation at the present time, the stockholder-licensee representatives are continuing to meet

as the board of directors, the Executive Committee, or other committees of Sealy, Inc. and discuss, agree upon and set

(a) The retail prices at which Sealy products could be sold;

(b) The retail prices at which Sealy products could be advertised;

(c) The comparative retail prices at which the stockholder-licensees and the Sealy retailers could advertise Sealy products;

(d) The minimum retail prices below which Sealy products could not be advertised;

(e) The minimum retail prices below which Sealy products could not be sold; and

(f) The means of inducing and enforcing retailers to adhere to these agreed upon and set prices.

VI. DISSEMINATION TO STOCKHOLDER-LICENSEES OF SEALY BOARD OF DIRECTORS AND SEALY EXECUTIVE COMMITTEE DECISIONS

194. E. H. Bergmann, president of Sealy, Inc., prepared and sent to all stockholder-licensee members Sealy Policy Bulletin No. 11, dated August 8, 1952, which informed them that the stockholder-licensee representatives constituting the board of directors had agreed that extra length bedding of 78 inches and 82 inches, on all tufted resale mattresses from $49.50 through $79.50, including the Posturepedic mattress, all companion box springs and foundations, were to be *sold* for the same price as the regular length of 75 inches. This bulletin was revised and reissued in April 1955 (GX 742, 758; Tr. 1721–1722, 1750; Doc. 3–703).

195. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Sealy Policy Bulletin No. 7 to the licensee-members, which informed them that no price below $29.50 was authorized on any Sealy

mattress and all trade-in sales were prohibited. This bulletin superseded previous SP–7 bulletins of March, June, and December 1952, May 1954, and June 1955. In February 1953, Sealy, Inc. issued Revised Bulletin SP–14 to all licensee-members informing them that the stockholder-licensee representatives constituting the board of directors had changed, agreed upon and set the price of the Sleep Charm at $39.95 (GX 770, 772, 746; Tr. 1733, 1764–1765; Doc. 3–698, 3–715, 3–716).

196. In November 1954, Sealy Policy Bulletin No. 22 was issued to all licensee-members informing them of the various minimum prices at which their dealers could advertise Sealy merchandise and instructing them that all violations had to be called to the retail dealer's attention (GX 756; Tr. 1736–1737; Doc. 3–5523).

197. In January 1955, revised Sealy Policy Bulletin No. 4 was issued to all licensee-members. This bulletin stressed that if an item was pre-ticketed as to its value, the pre-ticketed price could not be reduced except upon specific directions of Sealy, Inc., nor could resale items in the national resale line be reduced in price at any time without the specific authority of Sealy, Inc. The bulletin then specified the resale price of eighteen different Sealy products in the national resale line and seven different products in the alternate resale line (GX 757; Tr. 1741–1745; Doc. 3–727, 3–728, 3–729).

198. In February 1957, Sealy, Inc. issued a revised Sealy Policy Bulletin No. 2 to all licensee-members on the subject of minimum retail prices, supplementing prior bulletins of January and February 1954, and April, May, June, and August 1955. This bulletin informed the members that the stockholder-licensee representatives acting as the board of directors had

agreed upon and set the prices below which Sealy products could not be advertised or sold and the bulletin further listed the specific minimum prices for the various Sealy products as approved by the stockholder-licensee representatives acting as the Executive Committee in January 1957 (GX 775; Tr. 1766–1768; Doc. 3–735, 3–736).

199. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann issued Sealy Policy Bulletin No. 23 to all Sealy stockholder-licensees setting forth regulations controlling the sale of Con-Sealy beds, Redi beds, and Sealy resale beds and the minimum prices of these products. This bulletin superseded prior SP–23 bulletins issued in November 1954 and May 1955 (GX 769; Tr. 1759–1762; Doc. 3–678, 3–681 to 3–683).

200. In June 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Bulletin No. 62 to all stockholder-licensee members informing them of the specifications for the Smart Living stores promotion and stressing the suggested resale prices to be in effect. The bulletin also lists in excess of 118 associated stores, by name and address, in seventeen different States which were to participate in the promotion (GX 779; Tr. 1776–1777; Doc. 3–860 to 3–868).

201. In August 1956, Sealy, Inc., over the signature of E. H. Bergmann issued Bulletin No. 65 to all licensee-members informing them that the stockholder-licensee representatives serving as the Advertising and Merchandising Committee had agreed upon and set the suggested resale prices for Sealy king size sets and the prices so agreed upon and set (GX 780; Tr. 1777–1778; Doc. 3–871).

202. Sealy, Inc., over the signature of E. H. Bergmann, issued to all licensee-members Bulletin No. 67, dated August 23, 1956, on the subject of "Price Position" and solicited from the licensee-members any

suggestions and observations on the subject of price which they might have had (GX 781; Tr. 1779–1780; Doc. 3–874).

203. Sealy, Inc. issued Bulletin No. 69 in August 1956, over the signature of E. H. Bergmann, on the subject of "Price Position" which informed all the licensee-members to whom it was sent that it was the unanimous opinion of the stockholder-licensee representatives comprising the board of directors that the resale prices should not be increased, and that a letter to the trade announcing the maintenance of the then present retail prices was being prepared (GX 782; Tr. 1780; Doc. 3–876).

204. Sealy, Inc. issued Bulletin No. 78 in September 1956, over the signature of E. H. Bergmann, which stated that M. A. Kaplan had been requested to compose a letter which could be sent by all licensee-members to active and prospective retail dealers regarding Sealy's decision to maintain then current resale prices. Attached to the bulletin was a copy of the letter composed by M. A. Kaplan, which Mr. Bergmann suggested should be dispatched from all licensee-members to all active and prospective dealers. The letter addressed to all Sealy dealers stated that retail prices could not be justifiably increased at the present time, and therefore Sealy was maintaining resale prices (GX 783; Tr. 1781–1784; Doc. 3–887, 3–888).

205. In October 1956, Sealy, Inc., over the signature of E. H. Bergmann, issued Bulletins No. 79 and ADV 109, entitled "Regulatory Decisions by Board of Directors, August 28, 1956," and which stated the decision by the stockholder-licensee representatives acting as the board of directors that a price comparison of $79.50 must never be used in promotional advertising (GX 784, 804; Tr. 1784–1785, 1800; Doc. 3–889, 3–1109).

206. From time to time Sealy, Inc. has issued specifications containing pre-ticketed resale prices and names for various Sealy products. These specifications have been approved by the stockholder-licensee representatives acting as the board of directors (GX 786–789, 791–793, 795–796; Tr. 1786–1792; Doc. 3–2900, 3–2953, 3–2965, 3–2967, 3–2969, 3–2970, 3–2979, 3–2986, 3–2991, 3–2992).

207. In September 1952, the stockholder-licensee representatives acting as the board of directors decided that the failure of any licensee to comply with every item of the specifications established from time to time, including the minimum resale prices set up for the various Sealy products, would be deemed to be harmfully and injuriously damaging to the Sealy name. This action brought the failure to comply with the minimum resale prices under the "manufacturer's contract" clause which allowed the stockholder-licensee representatives acting as the board of directors to terminate the contract with the stockholder-licensees for pursuing any course of action in the selling of Sealy products which would be detrimental or injurious to Sealy (Article IV, 13 of contract, GX 1098). This decision was disseminated to the licensee-members in Sealy Policy Bulletin No. 12, dated October 7, 1952, which also stressed the resale prices then established (GX 632, 743; Tr. 1723–1725, 1478–1479; Doc. 3–701, 3–1584).

208. Sealy, Inc. issued four specifications in February 1957 for Sealy products, each bearing a specified label containing a specific name and retail price (GX 798–801; Tr. 1795–1796; Doc. 3–2924 to 3–2927).

209. In April 1956, Sealy, Inc. issued Bulletin ADV. No. 42 to all licensee-members making available to them promotional ads, mats, and specifications for four promotions and specifying suggested retail

prices for six Sealy products (GX 803; Tr. 1799–1800; Doc. 3–1008 to 3–1010).

210. Sealy, Inc. in November 1956 issued its Bulletin ADV. No. 127 to all licensee-members enclosing proofs of advertising mats for Sealy's 76th anniversary sale last chance ads. Each of four mats contained the $59.50 price effective after March 16, the 76th anniversary sale price as $39.95, the savings of $19.55 if the Sealy Natural Rest mattress were purchased during the sale, and a pre-ticketed price of $59.50 after March 16 (GX 805; Tr. 1800–1802; Doc. 3–1132 to 3–1133A).

211. In December 1956, Sealy, Inc. issued its Bulletin ADV. No. 137 containing specifications and photostats of ads for the licensee promotional manuals. The specifications show retail prices for Sealy products. The ads show the name of the retail store and the price of $44.95 for the 837 coil mattress (GX 806; Tr. 1803–1805; Doc. 3–1147 to 3–1151).

212. Sealy, Inc. issued a manual for the licensee meeting to be held January 14, 1956 concerning the 1956 Posturepedic campaign, which contained the agreed upon and set retail price for the Posturepedic innerspring mattress (GX 807; Tr. 1806–1807; Doc. 3–3599 to 3–3649).

VII. POLICING OF AND ENFORCEMENT OF THE AGREED UPON AND SET RETAIL PRICES BY SEALY, INC.

213. In October 1951, E. H. Bergmann writing for Sealy, Inc., wrote to the Brooklyn licensee-member that one of his retailers had advertised a Sealy product below the permissible minimum price, and that he, Bergmann, must have written assurance from both the Brooklyn licensee-member and the retailer that such an ad would never occur again. Bergmann further stated that if the requested assurances were

not received he would bring the Brooklyn licensee-member's contract before the board of trustees for cancellation. Copies of this letter also were sent to other stockholder-licensees (GX 809; Tr. 801, 1814–1815; Doc. 3–3854, 3–3854A).

214. In November 1951, J. R. Lawrence for Sealy, Inc. wrote the Memphis licensee-member concerning an ad run by a dealer in Chattanooga which offered a Sealy product at a compared price, and instructed the Memphis licensee-member to bring the matter to the attention of the proper party so there would be no repetition of such an ad in the future (GX 810; Tr. 1816–1817; Doc. 3–3905).

215. In February 1952, E. H. Bergmann for Sealy, Inc. wrote directly to a retailer in Wichita, Kansas, that one of the retailer's ads which featured a $79.50 Sealy Posturepedic mattress for $39.75 had been brought to Sealy, Inc.'s attention and that such an ad was in violation of Sealy, Inc.'s rules. Bergmann further stated that all of Sealy, Inc.'s time and energy and every dollar it could spare was spent to establish the resale prices of Sealy merchandise so that dealers would not be subject to the vicissitudes of price cutting, and requested the retailer to refrain from any further price reductions on any regular pre-ticketed resale Sealy item (GX 811; Tr. 1818–1820; Doc. 3–3966).

216. E. H. Bergmann for Sealy, Inc. in February 1952 and February 1953 wrote the Los Angeles stockholder-licensee that the Los Angeles stockholder licensee's retailers had advertised Sealy headboard ensembles below the agreed upon and set minimum price (GX 812, 818; Tr. 1820–1822, 1830–1831; Doc. 3–3906, 3–3906A, 3–4049).

217. In October 1952, J. R. Lawrence for Sealy, Inc. wrote a retailer in Ohio concerning one of the

retailer's ads which violated Sealy, Inc.'s resale policy and requested and solicited the cooperation of the store in preventing a reoccurence. Lawrence further asked the retailer for written assurance that he would be guided by Sealy, Inc.'s policy on resale merchandise in the future and that, if the retailer wished to run a comparative price on Sealy merchandise, to work out an agreement with the Cleveland licensee-member for merchandise other than Sealy's regular resale line (GX 814; Tr. 1825–1826; Doc. 3–4227).

218. In December 1952, Sealy, Inc. by E. H. Bergmann wrote to the Reading licensee-member concerning an ad by a retailer making an allowance of $20.00 for an old mattress on a trade-in sale, and requested the Reading licensee-member to call it to the attention of the retailer and tell the retailer not to use any type of trade-in ads on Sealy merchandise (GX 815; Tr. 1826–1827, Doc. 3–4052).

219. In February 1953, the Cleveland stockholder-licensee wrote to Sealy, Inc. that certain retailers in Wheeling, West Virginia, and Youngstown, Ohio, who were retailers of the Pittsburgh stockholder-licensee, had advertised the Sealy Posturepedic mattress with a $5.00 trade-in allowance, and that some of the Cleveland stockholder-licensee's dealers were disturbed about it. E. H. Bergmann, president of Sealy, Inc., telephoned the Pittsburgh stockholder-licensee who in turn contacted the retailers involved and wrote Sealy, Inc. that the retailers denied doing such advertising (GX 816–817; Tr. 1828–1830; Doc. 3–3982, 3–3983).

220. In April 1953, the Brooklyn stockholder-licensee sent Sealy, Inc. an ad run by a retailer of the Memphis stockholder-licensee featuring a Sealy Smooth Sleep mattress at a compared price in violation of Sealy, Inc.'s regulations. Mr. Bergmann for Sealy, Inc. wrote the Memphis stockholder-licensee

and requested him to see if Sealy, Inc. and the Memphis stockholder-licensee could halt this type of handling of Sealy merchandise. The Memphis stockholder-licensee thereupon wrote the retailer and informed him that the ad was a violation of Sealy's retail advertising policy and ads of that type must not be run in the future, the particular mattress must be offered at its set resale price, and all selling must be done at the pre-ticketed price (GX 819–821; Tr. 1832–1836; Doc. 3–4231, 3–4232).

221. In June 1953, the Cleveland stockholder-licensee sent Sealy, Inc. an ad run by a retailer which showed a Sealy Posturepedic mattress at a cut price and requested Sealy, Inc. to write the retailer its usual firm letter even though the retailer was not a dealer of the Cleveland stockholder-licensee (GX 822; Tr. 1837–1838; Doc. 3–4235).

222. In July 1953, E. H. Bergmann for Sealy, Inc. wrote the Paterson licensee-member concerning an ad run by one of the Paterson licensee-member's retailers which violated Sealy, Inc.'s advertising policy and further stated that although the president of Sealy, Inc. had the right to reject any ads that are inconsistent with policy for credit on the advertising program, Bergmann would allow the ad to go in for credit, but asked the Paterson licensee-member to watch his accounts and see that they do not run ads inconsistent with Sealy, Inc. policy (GX 823; Tr. 1838–1839; Doc. 3–4233).

223. In August 1953, Sealy, Inc. wrote the Fort Worth licensee-member concerning an advertisement run by one of the Fort Worth licensee-member's retailers which violated practically all the rules of Sealy's comparative price policy by "breaking" the price on the Sealy Posturepedic mattress and advertising a Sealy product below the agreed upon and set

minimum price, and requested the Fort Worth licensee-member to write Sealy, Inc. concerning the matter (GX 824; Tr. 1839–1840; Doc. 3–4233).

224. E. H. Bergmann writing for Sealy, Inc. requested the Pittsburgh stockholder-licensee in December 1953, to protest to one of his retailers because an ad run by the retailer on a Sealy product violated the Sealy comparative policy by advertising the mattress as a regular $59.50 mattress for $39.95 and contained a "save twenty dollars statement" two weeks before the announcement of Sealy's national anniversary promotion (GX 825; Tr. 1841–1842; Doc. 3–4164).

225. In April 1954, E. H. Bergmann, president of Sealy, Inc., wrote the Kansas City licensee-member concerning an advertisement run by one of the Kansas City licensee-member's retailers which showed Sealy products below the agreed upon and set minimum retail price. Mr. Bergmann stressed the point that "Sealy *cannot* and *will not* tolerate such violations in the future," and threatened to put the Kansas City licensee-member on probation if any further infractions occurred from the time of such infractions to the end of the licensee agreement. Copies of the letter also were sent to licensee-members in Memphis, Louisville, Chicago, Des Moines, Denver, Houston, and Fort Worth. Subsequently, the Kansas City licensee-member wrote Mr. Bergmann that he had written every key account in his area urging them not to run any advertising on Sealy merchandise, other than those set up through Sealy's mat service, without obtaining a careful double check by the Kansas City sales representative, in order to reduce the possibility of running ads that may contain violations of Sealy, Inc.'s policy, and enclosed a copy of that

letter (GX 826, 829–830; Tr. 1842–1846, 1851–1856; Doc. 3–3729, 3–3730, 3–3733 to 3–3735).

226. The Cleveland stockholder-licensee in May 1954 notified one of his retailers that an ad run by the retailer constituted an extremely serious violation of Sealy advertising policy by advertising a Sealy product after the end of the permissible promotion period. That letter, a copy of which was sent to Sealy, Inc. and the Detroit stockholder-licensee, further stated:

> The second violation is that the anniversary and Golden Sleep *may not be sold* or advertised for less than $39.95, whereas your ad showed this merchandise at $37.88.
>
> *These policies are established not by our factory, but by Sealy nationally* and, therefore, there are national repercussions when such ads are run. [Emphasis supplied]

and requested the retailer to assure the Cleveland stockholder-licensee in writing that these Sealy products would not be advertised out of season, nor advertised or sold for less than the specified minimum (GX 833; Tr. 1859–1861; Doc. 3–4135, 3–4136).

227. In May 1954, Mr. Bergmann writing for Sealy, Inc. informed the Baltimore licensee-member that one of the Baltimore licensee-member's retailers had violated Sealy, Inc.'s advertising policies. The Baltimore licensee-member thereupon wrote the retailer that his advertisement was inconsistent with Sealy policy. A copy of this letter was then forwarded by the Baltimore licensee-member to Mr. Bergmann at Sealy, Inc. who in turn complimented the Baltimore licensee-member on this letter and stated *"This is just the type of policing that we should do in combination of the national and local offices* in cementing the retailers' minds to our advertising rules" (emphasis supplied) (GX 834–835; Tr. 1861–1865; Doc. 3–4160, 3–4161).

228. In July 1954, E. H. Bergmann, president of Sealy, Inc., wrote to the Louisville licensee-member and in August 1954 wrote the Chicago licensee-member about extracting a promise from a retailer in both licensee-members' territories not to advertise any Sealy mattress for less than $39.95 during the periods of Sealy, Inc.'s anniversary and Golden Sleep promotions and requested the licensee-members to arrange this agreement with the retailer (GX 676–677; Tr. 1612–1615; Doc. 3–3674, 3–3675).

229. In July 1954, J. R. Lawrence writing for Sealy, Inc., informed the Cleveland stockholder-licensee that one of the Cleveland stockholder-licensee's retailers had advertised a Sealy product in a manner that violated Sealy, Inc.'s schedule on price comparisons and, further, that the Cleveland stockholder-licensee should take it up with the retailer and see that Sealy, Inc.'s policy on the retail advertising of Sealy merchandise was followed in the future (GX 836; Tr. 1865–1866; Doc. 3–4230).

230. In July 1954, J. R. Lawrence, executive vice president of Sealy, Inc., wrote the Baltimore licensee-member that one of the Baltimore licensee-member's retailers in Washington, D.C., had advertised a Sealy product below the agreed upon and set minimum retail price (GX 837; Tr. 1866–1867; Doc. 3–3877).

231. In September 1954, E. H. Bergmann, writing for Sealy, Inc., informed the Cleveland stockholder-licensee that one of the Cleveland stockholder-licensee's retailers had violated Sealy, Inc.'s policies by advertising Sealy products below the agreed upon and set minimum retail price, and requested the Cleveland stockholder-licensee to dispatch a letter to the retailer immediately, which letter would remind the retailer of Sealy, Inc.'s minimum retail price regulations and at the same time ask the retailer to

confirm compliance with these regulations in future ads. Bergmann further requested the Cleveland stockholder-licensee to furnish Sealy, Inc. with a copy of his letter to the retailer (GX 838; Tr. 1868–1869; Doc. 3–4137).

232. In September 1954, J. R. Lawrence, writing for Sealy, Inc., informed the Cleveland stockholder-licensee that an organization calling itself Club Sales Merchandise Plan was circulating a catalog showing Sealy products below the agreed upon and set retail prices for these products and requested the Cleveland stockholder-licensee to help Sealy, Inc. trace down the source of these Sealy products (GX 839; Tr. 1869–1871; Doc. 3–4229).

233. E. H. Bergmann, president of Sealy, Inc., in September 1954 wrote the Chicago stockholder-licensee that one of the Chicago stockholder-licensee's retailers, Marshal Field & Company, had advertised Sealy products below the agreed upon and set minimum retail price and suggested that the Chicago stockholder-licensee inform the retailer to maintain the minimum retail price in the future (GX 840; Tr. 1872–1873; Doc. 3–4140).

234. Sealy, Inc., under the signature of E. H. Bergmann, wrote the St. Paul licensee-member in November 1954 about the St. Paul licensee-member permitting Sealy products with price tabs indicating retail prices to be sold and advertised at other than the retail tab price and instructed the St. Paul licensee-member to inform his sales manager and the retailers involved "that *there is a basic principal in Sealy of advertising and merchandising to the effect that if an article is pre-ticketed, it cannot be reduced in any manner, shape, or form*" (emphasis supplied) (GX 842; Tr. 1875–1876; Doc. 3–3779).

235. In January 1955, the Waterbury stockholder-licensee reported to Sealy, Inc. that a retailer of the Brooklyn stockholder-licensee had run an advertisement, which showed Sealy products below the agreed upon and set minimum retail price, enclosing a copy of the advertisement and expressed the certainty that Sealy, Inc. was doing all it could to correct the situation (GX 844; Tr. 1878–1880; Doc. 3–4145).

236. In February 1955, E. H. Bergmann for Sealy, Inc., had the Waterbury stockholder-licensee purchase a mattress from a discount house, which had listed a Sealy Posturepedic mattress below the agreed upon and set price, to ascertain the source of the discount house's supply of Sealy products. This source was thereby traced to the Brooklyn licensee-member (GX 845; Tr. 1880–1881; Doc. 3–4144).

237. E. H. Bergmann, writing for Sealy, Inc. in February 1955, informed the Richmond stockholder-licensee that a retailer of the Richmond stockholder-licensee had cut the price on the Sealy Anniversary mattress and further stated that "in the serious violations of our policies by retail dealers that this office [Sealy, Inc.] must take recognition of such violations" and "that this firm must be told that if there be a further violation of this nature that the national office [Sealy, Inc.] will take a position that the account must be denied any further Sealy merchanside." The Richmond stockholder-licensee thereupon wrote to the retailer about the violation and quoted the above statements from Mr. Bergmann's letter. After writing to the retailer, the Richmond stockholder-licensee replied to Bergmann, that he felt that Bergmann's solution to the situation was correct. Subsequently, E. H. Bergmann for Sealy, Inc. wrote the Richmond stockholder-licensee that he should not sell the tabloid circular on a forthcoming Posturepedic event to this

retailer but, if the Richmond stockholder-licensee felt he wanted to sell this to the retailer, then it was necessary for the Richmond stockholder-licensee to obtain a letter from the retailer stating definitely that the retailer would not reduce any price in the circular. Bergmann further stated if the retailer reduced any prices in the circular it would create chaos in that portion of Virginia and Washington, D.C., which is handled by the Baltimore licensee-member, and stressed that "Under no circumstances must *we* have a reoccurrence of this dealer violating *our* rules" (emphasis supplied) (GX 846–848; Tr. 1882–1886; Doc. 3–4157 to 3–4159).

238. E. H. Bergmann, president of Sealy, Inc., in February 1955, wrote the St. Paul licensee-member concerning an advertisement by one of the St. Paul licensee-member's retailers which showed Sealy products at reduced prices in violation of Sealy, Inc.'s advertising policies, and stated that Sealy, Inc. prohibited the reduction of any pre-ticketed Sealy product and that such ads could not be tolerated since they created chaos for the St. Paul licensee-member's other retailers and the retailers of contiguous Sealy plants. Bergmann further stated that, if the dealer persisted in running ads that were inconsistent to Sealy's establish policy of advertising and merchandising, Sealy, Inc. would not hesitate to tell the St. Paul licensee-member to which accounts he could or could not sell Sealy merchandise and instructed the St. Paul licensee-member to advise his retailer of the seriousness of these violations of Sealy, Inc.'s retail advertising policy (GX 849; Tr. 1889–1891; Doc. 3–3777, 3–3778).

239. In March 1955, C. B. McGillivray, sales manager of the Chicago stockholder-licensee, wrote one of the Chicago stockholder-licensee's retailers, with a

copy to Mr. Bergmann of Sealy, Inc. concerning an ad which the retailer had run which showed a Sealy mattress below the agreed upon and set minimum retail price and thereby violated Sealy, Inc.'s retail advertising regulations. The retailer's general manager agreed to run a retraction of the advertisement and gave the Chicago stockholder-licensee permission to use a copy of the retraction to reverify the Sealy, Inc. policy with other Chicago dealers who advertised and featured Sealy mattresses (GX 674; Tr. 1610–1611; Doc. 3–3673).

240. E. H. Bergmann of Sealy, Inc. in March 1955 wrote to the Cleveland stockholder-licensee that he had received a copy of an ad run by a retailer of the Cleveland stockholder-licensee which violated Sealy, Inc.'s retail advertising rules, and requested the Cleveland stockholder-licensee to take steps to correct it and write a letter to the retailer admonishing him not to advertise a Sealy mattress in a manner which would violate Sealy, Inc.'s retail advertising regulations and to send a copy of this letter to Sealy, Inc. (GX 851; Tr. 1893–1894; Doc. 3–4228).

241. E. H. Bergmann for Sealy, Inc. in March 1955, wrote the Chicago stockholder-licensee about an advertisement by one of the Chicago stockholder-licensee's retailers which showed a Sealy product below the agreed upon and set retail price as covered by a Sealy policy bulletin and requested the Chicago stockholder-licensee to verify the correctness of the advertisement and the correctness of the price restriction. The Chicago stockholder-licensee replied that he thought that Sealy should not object to the advertisement. Thereafter, Sealy, Inc. informed the Chicago stockholder-licensee that the ad was definitely a violation of the Sealy policy (GX 680–682; Tr. 1620–1625; Doc. 3–3667 to 3–3669).

242. In April 1955, E. H. Bergmann for Sealy, Inc., wrote the Allston licensee-member concerning an advertisement run by a retailer of Allston licensee-member which Bergmann had received and which violated Sealy, Inc.'s retail advertising policy, and informed the Allston licensee-member that Allston had violated the rules by permitting such an ad to be run and that "there must not be any repeats of this type of handling" (GX 852; Tr. 1894-1895; Doc. 3-4231).

243. In April 1955, the Louisville licensee-member wrote Sealy, Inc. that he had been approached by a firm which wanted to purchase Sealy products from the Louisville licensee-member. This firm had previously shown Sealy products below the agreed upon and set retail prices and was located at the same address at which a discount house was operated. The Louisville licensee-member further informed Sealy, Inc. that he had refused to sell this firm and had been informed by that firm that it could buy Sealy products from a Chicago outlet and requested Sealy, Inc. to check with the Chicago outlet and find out why it had sold to the retail firm in Louisville. Subsequently, E. H. Bergmann for Sealy, Inc. wrote the Chicago outlet stating that (a) the Louisville firm previously had shown Sealy products below the agreed upon and set retail prices; (b) the Louisville firm upon being refused Sealy products by the Louisville licensee-member had told the Louisville licensee-member he could get Sealy products from the Chicago outlet; (c) Sealy, Inc. could not and would not sell any type of firm which did not maintain Sealy, Inc.'s retail prices; and (d) Sealy, Inc. definitely did not want the Louisville firm to have any Sealy merchandise (GX 854-855; Tr. 1897-1900; Doc. 3-4146, 3-4147).

244. In May 1955, the Chester licensee-member, at

the request of one of his retailers, wrote Sealy, Inc. requesting permission to allow the retailer to promote a Sealy product in conjunction with a trade-in allowance during a week-long promotion by merchants in Atlantic City where the retailer was located. E. H. Bergmann for Sealy, Inc. denied this request, stating that Sealy, Inc. could not grant an exception to the rule in Sealy policy bulletins which restricted trade-in sales (GX 683–684; Tr. 1626–1628; Doc. 3–3501, 3–3502).

245. In June 1955, the Chicago stockholder-licensee wrote to one of his dealers concerning an ad run by the dealer which violated Sealy's retail advertising policy in showing Sealy products below the set minimum retail selling price and requested the dealer to inform its advertising department of the violations so there would be no repetition of such policy violations in the Chicago area. A copy of this letter was sent to E. H. Bergmann at Sealy, Inc. (GX 857; Tr. 1902–1903; Doc. 3–4130, 3–4131).

246. E. H. Bergmann for Sealy, Inc. in June 1955 wrote the Rochester licensee-member concerning an advertisement run by one of his retailers which Bergmann had received and which had violated every rule in the rule book of Sealy, Inc. Bergmann further informed the Rochester licensee-member that if he ever again permitted such a flagrant violation of Sealy, Inc.'s rules and regulations as had been permitted in that ad, his contract with Sealy, Inc. would be cancelled or he would be put on probation (GX 858; Tr. 1903–1905; Doc. 3–4165, 3–4166).

247. In July 1955, a retailer of the Chester licensee-member sent the Chester licensee-member an ad which another Sealy retailer in the area had run which featured Sealy products in combination with other items at a price below the agreed upon and set retail price

for Sealy products and informed the Chester licensee-member that Chester could not continue to carry Sealy products if he allowed that kind of advertising. The Chester licensee-member thereupon sent the ad to Sealy, Inc. and asked Sealy, Inc. whether the ad came within its "code" so the Chester licensee-member would know how to proceed. E. H. Bergmann for Sealy, Inc. replied that the dealer running the ad should be told emphatically that Sealy, Inc. did not approve of any Sealy resale item being combined with other items at a cut price and that such an indication of non-approval should be all that was necessary to keep the Chester licensee-member's retailers in line (GX 859–861; Tr. 1906–1911; Doc. 3–4151 to 3–4153).

248. In July 1955, the Schenectady and Brooklyn licensee-members exchanged correspondence about a retailer in New York City which advertised Sealy products below the agreed upon and set retail prices for Sealy products. Thereafter, the Schenectady licensee-member purchased a Sealy product from the retailer and found that it had been shipped by another retail customer of the Brooklyn licensee-member. In October 1955, the Schenectady licensee-member informed the Brooklyn licensee-member of his actions and the resultant findings and further that the offensive retailer's operation was very vicious in advertising and selling Sealy products at cut prices and since that retailer had a large mailing list in the Schenectady licensee-member's territory, he was causing a lot of trouble for the Schenectady licensee-member and his customers. The Brooklyn licensee-member replied that he had contacted his retail customer who had shipped the Sealy products to the offending retailer and he had admitted so supplying the offensive retailer and had guaranteed to no longer supply the offending retailer with any Sealy merchandise what-

soever. The Brooklyn licensee-member further stated that he had advised his retailer that he would continually police the offending retailer and if he found that he was selling Sealy products to the offending retailer the Brooklyn licensee-member would discontinue supplying him with Sealy products, and that the Brooklyn licensee-member would do everything in his power to stop the supply of Sealy merchandise to the offending retailer. The Brooklyn licensee-member forwarded a copy of this letter to Sealy, Inc. and the Waterbury and Paterson licensee-members. Subsequently, Sealy, Inc. by E. H. Bergmann on October 14, 1955 wrote the Brooklyn licensee-member with copies to the Schenectady and Waterbury licensee-members stating that since Sealy, Inc. had not received an answer from the Brooklyn licensee-member to its letter about the offending retailer, Sealy, Inc. assumed that the Brooklyn licensee-member had taken care of the situation in a manner satisfactory to the Brooklyn licensee-member's eastern associates (GX 865–867; Tr. 1917–1921; Doc. 3–4148, 3–4149).

249. In February 1956, E. H. Bergmann for Sealy, Inc. wrote the Richmond licensee-member concerning a retailer of the Richmond licensee-member who continually ran advertisements which were contrary to Sealy, Inc.'s retail advertising, merchandising, and price structure policies by featuring Sealy products below the agreed upon and set retail prices. Bergmann stated that Sealy, Inc. was not going to tolerate a customer taking carte blanche liberty with Sealy, Inc.'s policies and instructed the Richmond licensee-member to tell the retailer once and for all what Sealy, Inc.'s rules were and that the retailer must abide by them. Subsequently, the Richmond licensee-member telephoned the retailer and read to him portions of Bergmann's letter to the Richmond licensee-

member. The same day the Richmond licensee-member wrote the retailer requesting him to eliminate the objectionable features in his advertising as outlined by the Richmond licensee-member to the retailer and as outlined by Sealy, Inc. to the Richmond licensee-member, and informing him of the main objections to his advertisements and that it was mandatory that he adhere to Sealy, Inc.'s rules. The Richmond licensee-member further informed the retailer that Sealy, Inc. would insist that the Richmond licensee-member cease selling Sealy merchandise to him unless he eliminated the objectionable features from his advertising. The Richmond licensee-member then wrote Mr. Bergmann at Sealy, Inc. informing him that he had impressed upon the retailer that if the retailer continued his policies as outlined by Sealy, Inc., Sealy, Inc. would not allow any more Sealy merchandise to be sold to him (GX868–870; Tr. 1921–1923, 1926–1929; Doc. 3–4210 to 3–4214).

250. In February 1956, E. H. Bergmann for Sealy, Inc. wrote the Cleveland stockholder-licensee about an advertisement run by one of his retailers which was inconsistent with Sealy, Inc.'s advertising policies and suggested that the Cleveland stockholder-licensee speak to the retailer and get his assurance that he would refrain from such advertising in the future (GX 871; Tr. 1929–1930; Doc. 3–4182).

251. In March 1956, through E. H. Bergmann, Sealy, Inc. wrote to the Richmond licensee-member after his advertisements were submitted to Sealy, Inc. for credit on the advertising rebate program, that advertisements run by one of the Richmond licensee-member's retailers did not coincide with the Sealy, Inc. rules and regulations on retail advertising by featuring trade-in allowances on Sealy products, and instructed the Richmond licensee-member to advise

the retailer that he could not use the trade-in feature in ads pertaining to Sealy merchandise (GX 872; Tr. 1931–1932; Doc. 3–4209).

252. In April 1956, the Cleveland stockholder-licensee informed one of his retailers that an ad run by the retailer violated Sealy's retail advertising rules, that the Cleveland stockholder-licensee would not pay one cent towards the cooperative advertising agreement if any ad was run which violated the Sealy rules, and that such erroneous advertising would nullify any advertising agreement which they may have had previously established. The Kansas City stockholder-licensee, having received complaints from several of its largest customers about this advertisement by the Cleveland stockholder-licensee's retailer, wrote Mr. Bergmann at Sealy, Inc. that because the Kansas City stockholder-licensee rigorously fights to police its retailers' ads so that they conform to Sealy, Inc.'s established retail advertising policies, the Kansas City stockholder-licensee had received numerous complaints from its customers about this ad by one of the Cleveland stockholder-licensee's retailers that obviously Sealy policy was not the same all over the United States, and further requested a statement from Sealy, Inc. which the Kansas City stockholder-licensee could pass on to its dealers (GX 874–875; Tr. 1934–1937; Doc. 3–4181, 3–4200, 3–4201).

253. In May 1956, a retailer of the Lexington licensee-member complained to the Lexington licensee-member about a retail outlet offering Sealy products below the set retail prices. The Lexington licensee-member's sales representative inquired at the retail outlet about the availability of mattresses and was told that they offered only Sealy mattresses and the price of the Posturepedic foam rubber mattress was below the established retail price f.o.b. Washington,

D.C. The Lexington licensee-member thereupon wrote Mr. Bergmann at Sealy, Inc. that it was quite obvious that the retail outlet was having this merchandise transferred to them from Washington, D.C., and requested Sealy, Inc. to take whatever action was necessary. Sealy, Inc. thereupon sent the Baltimore licensee-member a photocopy of the Lexington licensee member's letter, and requested the Baltimore licensee-member to inform the Lexington licensee-member of the steps the Baltimore licensee-member had taken to eliminate the situation. Sealy, Inc. also informed the Lexington licensee-member that the District of Columbia was a haven for price cutters, had no fair trade laws, and that the Baltimore licensee-member had been doing a masterful job in controlling the price cutters (GX 877–878; Tr. 1939–1942; Doc. 3–4202, 3–4203).

254. In June 1956, Sealy, Inc. wrote the Cleveland stockholder-licensee concerning an advertisement by one of his retailers that violated Sealy Policy Bulletin No. 7, governing restrictions on promotional advertising, and requested the Cleveland stockholder-licensee to bear down on the retailer for advertising Sealy products in violation of the Sealy retail advertising policies (GX 879; Tr. 1943–1944; Doc. 3–4176, 3–4177).

255. In June 1956, one of the Memphis licensee-member's retailers complained to the Memphis licensee-member about the U.S. Merchandise Mart, Inc. in Fort Walton Beach, Florida, selling Sealy products at cost plus ten percent out of Washington, D.C., and informed the Memphis licensee-member that the U.S. Merchandise Mart was an Army discount house. The retailer further informed Memphis that he had tried to be fair with the sealy products and had not changed the retail price at which Memphis had told him to sell. Memphis thereupon forwarded a copy of the

retailer's letter to Mr. Bergmann at Sealy, Inc. and asked Bergmann if he had heard from the Baltimore licensee-member concerning a previous similar situation as the Memphis licensee-member would like to bring the matter to a definite conclusion (GX 880; Tr. 1944–1947). In July 1956, Mr. Rudick, the Baltimore stockholder-licensee, ceased supplying the U.S. Merchandise Mart with Sealy products until it gave Baltimore written assurance that it would refrain from shipping Sealy merchandise out of the greater metropolitan Washington, D.C. area (GX 1168–1172; Tr. 3485–3492).

256. In July 1956, the Chester licensee-member sent Mr. Bergmann at Sealy, Inc. a clipping which advertised a Sealy product in violation of Sealy, Inc.'s retail advertising policy. The ad had been run by a retailer of the Cleveland licensee-member. The Chester licensee-member further informed Sealy, Inc. that "Ernie" (the Cleveland licensee-member) should at least police his own area. E. H. Bergmann for Sealy, Inc. replied that this problem had been under review twice with the Cleveland stockholder-licensee and an issue would be made of the matter if there were any recurrences. Bergmann further pointed out that Sealy, Inc. had a clipping service and was watching for further violations, and Ernie (the Cleveland licensee-member) had promised to see that such violations were discontinued. Subsequently, in October 1956, the Chester licensee-member again sent Bergmann at Sealy, Inc. and ad run by a retailer of the Cleveland licensee-member which also violated Sealy, Inc.'s retail advertising policies. Bergmann thereupon wrote to the Cleveland stockholder-licensee about this further violation of Sealy, Inc.'s rules and stated that "* * * in this particular type of an organization *where the rules are set by those who wish to be gov-*

erned by said rules you have to be either fish or fowl and, * * * certainly the chairman of the advertising and merchandising committee * * * should be the one to lead in the strict adherence to these rules" (emphasis supplied). Bergmann further expressed the hope that he would not have to continue writing to Cleveland on these matters of policy infractions (GX 881–882, 891–892; Tr. 1947–1950, 1961–1964; Doc. 3–4171 to 3–4175).

257. In August 1955, E. H. Bergmann at Sealy, Inc., after ads were submitted by the Denver stockholder-licensee for credit on the advertising rebate program, discovered that an ad by one of the Denver stockholder-licensee's retailers showed Sealy products below the agreed upon and set retail price. Bergmann wrote the Denver stockholder-licensee concerning the violations and instructed him the ~~cut~~ in price could not be tolerated and further to direct a letter to the retailer calling his attention to the violation of Sealy, Inc.'s retail advertising policy and to obtain the retailer's immediate written assurance that the retailer would not repeat such price cutting on Sealy's nationally advertised resale items. Pursuant to these instructions, the Denver licensee-member wrote the retailer and informed him that the ad showing a price below the agreed upon and set retail price was a direct violation of Sealy's advertising policy, and solicited the retailer's immediate assurance that he would cooperate on future ads to avoid a recurrence. The Denver licensee-member also informed the retailer that all Sealy resale nationally advertised products could not "be advertised at discount, tie-in with a giveaway, trade-in allowance, or a group price," and that the ad had been called to the Denver licensee-member's attention by the Chicago office of Sealy, Inc. Denver forwarded a copy of this letter to Mr. Berg-

mann at Sealy, Inc. as per Bergmann's request. Thereafter Bergmann for Sealy, Inc. thanked the Denver licensee-member for his complete cooperation, referring to Denver's letter advising his retailer "of the complaint of the National Office," and stated that this letter was the proper technique to follow in impressing Sealy dealers that they must comply with Sealy advertising and merchandising policies (GX 883–885; Tr. 1951–1954; Doc. 3–4220 to 3–4222).

258. In August 1956, E. H. Bergmann for Sealy, Inc. sent the Rochester licensee-member a photocopy of a vigilante service report showing that the Vigilante Service had purchased a Sealy Posturepedic mattress from a discount house in Rochester, New York, at a price below the established retail price for that mattress and included the discount house's invoice which showed the identity of the discount house, the purchases made, the price and the shipping instructions. Bergmann informed the Rochester licensee-member that "As you know we have a vigilante service which each year buys one mattress at retail for the purpose of learning how prices are maintained * * *" and instructed Rochester to inform Sealy, Inc. of the steps Rochester had taken to correct the erroneous selling of Sealy merchandise to a discount house. Rochester replied that he had notified the discount house that Rochester would discontinue selling Sealy products to the discount house in the future and had retained the services of a shopping service to canvass Rochester's accounts and ascertain if any of them were discount houses. Rochester further promised that in the future he would not sell Sealy products to any account which was in the discount house class (GX 886–888; Tr. 1954–1958; Doc. 3–4223 to 3–4225).

259. In September 1956, Sealy, Inc. received from its clipping service a tear sheet of a full page advertisement by a retailer of the Rochester licensee-member which showed Sealy products below the agreed upon and set retail price. Mr. Bergmann of Sealy, Inc. thereupon wrote the Rochester licensee-member about the ad and informed Rochester that the ad was completely out of order because of the price stated therein and the name used thereon. Rochester replied that he would not offer this account any promotions in the future and would warn the account about the ad informing him in very definite terms that Rochester would not permit anything like this in the future (GX 889–890; Tr. 1958–1961; Doc. 3–4215 to 3–4217).

260. In October 1956, the Detroit licensee-member sent Mr. Bergmann at Sealy, Inc. an ad run by a retailer in New York which violated Sealy, Inc.'s retail advertising policies. Bergmann replied that he would write the Brooklyn licensee-member admonishing him for allowing an ad to be run which violated Sealy, Inc.'s retail advertising policies. Bergmann then wrote to Brooklyn as he had promised, about the offensive ad, pointing out the violations contained therein and instructed Brooklyn to tell the retailer that Sealy, Inc.'s rules "were not to be toyed with" and to advise Bergmann accordingly. Brooklyn, as instructed, contacted the retailer about the ad and the retailer promised not to violate Sealy, Inc.'s retail advertising regulations in any future ads. Brooklyn so informed Bergmann of the retailer's promise (GX 893–895; Tr. 1966–1970; Doc. 3–4183 to 3–4185).

261. In November 1956, a retailer of the Chicago stockholder-licensee complained to Sealy, Inc. about an ad which showed a Sealy product at a price below that established for that product, and pointed out that he could buy other mattresses for less than he paid

for Sealy products but that his store was willing to resell Sealy on a shorter margin because of Sealy's efforts to nationally advertise and presell Posturepedic products, but that for making this shorter margin concession, he expected inexorable price protection. The retailer further asked Sealy, Inc. what action it intended to take. The Chicago licensee-member replied to the retailer that Sealy's policy was to do everything within its persuasive and legal power to maintain their agreed upon and set advertised price on Sealy products and that a series of steps had been taken to make the company involved "comply with [Sealy's] policy and advertising requirements." Chicago then sent a copy of this letter to Sealy, Inc. (GX 896–897; Tr. 1971–1974; Doc. 3–4218, 3–4219).

262. In November 1956, E. H. Bergmann for Sealy, Inc. wrote the Baltimore licensee-member, complaining about a full page ad run by a Baltimore retailer which violated Sealy retail advertising policies, and condemned Baltimore as a member of the board of directors for permitting such an ad to be run (GX 898; Tr. 1974–1976; Doc. 3–4167, 3–4168).

263. E. H. Bergmann for Sealy, Inc. in November 1956 wrote the Fort Worth stockholder-licensee about a circular, one of the Fort Worth stockholder-licensee's retailers in *Texas* had distributed showing Sealy products below the agreed upon and set retail price. Fort Worth replied that, immediately upon receipt of Bergmann's letter, he had called the retailer who had withdrawn the offensive prices and agreed not to repeat such a circular. Fort Worth further pointed out to Mr. Bergmann that not only did the State of Texas not have fair trade laws, but they had antifair trade laws and therefore Fort Worth could not afford to write a retailer and be too positive in protesting cut prices; however, most of the Fort Worth's

dealers maintained the prices and cooperated with Fort Worth even though he did not have any weapons in Texas with which to fight (GX 899; Tr. 1977–1978; Doc. 3–4196).

264. In December 1956, the Chester licensee-member telephoned the Reading licensee-member about an ad run by a customer of Reading which showed a Sealy product at a price below the agreed upon and set minimum retail price for Sealy products. The next day Reading wrote E. H. Bergmann at Sealy, Inc., with a copy to the Chester licensee-member, and stated there was no question about the ad being a violation of Sealy, Inc.'s retail advertising and merchandising policy and that the retailer had run the ad against Reading's policy and without his knowledge. Reading further stated that he had an appointment with the retailer and the situation would be corrected. Subsequently, Chester wrote Reading, with a copy to Mr. Bergmann at Sealy, Inc., further informing Reading of the violations committed by advertising a Sealy product below the agreed upon and set minimum retail price. Chester also pointed out that *"we must always present to the public the thought that Sealy is a National Brand, not a brand manufactured by a number of different manufacturers but an entity,* even as the Simmons Co. is one," (emphasis supplied) and requested Reading to send Chester a copy of Reading's letter to the retailer indicating "that they may not under any conditions advertise Sealy in Phoenixville, otherwise the privilege of allowing you [Reading] to ship * * * [into Chester's territory] will be withdrawn immediately insofar as the Sealy name is concerned," and admonishing them for violating Sealy, Inc.'s authorized retail advertising policies (GX 901; Tr. 1980–1983; Doc. 3–3835, 3–3835A).

265. It was Sealy, Inc.'s admitted policy to urge

the stockholder-licensees to in turn urge their dealers to maintain the retail prices ageed upon and set by the stockholder-licensee representatives. As Mr. E. H. Bergmann, president of Sealy, Inc. from 1948 to 1960, put it, "We were always concerned with prices" (Tr. 3268–3269, 3271).

266. The purpose of the Sealy policy was to advertise Sealy products and "do everything we [Sealy, Inc.] possibly could to persuade the people to maintain those prices" (Tr. 3295).

267. In 1958, a retailer, Mr. G. N. Burkhart, Jr., in Brookston, Indiana, was informed by an official of the Chicago stockholder-licensee of Sealy, Inc. that Chicago was refusing to sell him any further Sealy products because Mr. Burkhart had not maintained the fixed retail prices for Sealy products (GX 1161; Tr. 3381–3395).

268. In the late 1956 or early 1957, a retailer, Mrs. Norman Bennett of the U.S. Merchandise Mart, Inc. in Washington, D.C., was informed by an official of the Baltimore licensee-member that "Sealy would no longer be able to sell us [the retailer] merchandise" (Tr. 3496), since the retailer was not selling the Sealy products at the fixed retail price. Subsequently, when Mrs. Bennett forwarded orders for Sealy merchandise to Baltimore, they were not accepted (Tr. 3498).

269. From 1962 until the present day, a consumer in the Washington, D.C., area, after diligent search, could not purchase a Sealy product below the retail price fixed by the stockholder-licensee representatives of Sealy, Inc. (Tr. 3462–3477).

270. Sealy, Inc., through its various officers, regularly policed and enforced the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. This

policing and enforcement was carried out through (1) subscribing to clipping services, (2) the advertising rebate progarm of Sealy, Inc., whereby the stockholder-licensees would send copies of their ads and their retailers' ads to Sealy, Inc. for credit on this program, and (3) the reporting by the stockholder-licensees and their retailers to Sealy, Inc. when they noticed infractions of Sealy, Inc.,'s retail policies and regulations. When violations of Sealy, Inc.'s retail regulations and policies were found, Sealy, Inc. by its officers would so inform the stockholder-licensees and instruct them to so inform their retailers or Sealy, Inc. by its officers would write directly to the retailers involved and inform them of the violations. The stockholder-licensees also regularly policed and enforced the retail prices set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. in the above described manner.

VIII. USE OF FAIR TRADE TO ENFORCE THE RETAIL PRICES AGREED UPON AND SET BY THE STOCKHOLDER-LICENSEE REPRESENTATIVES OF SEALY, INC.

271. In May 1951, J. R. Lawrence for Sealy, Inc. wrote the Des Moines stockholder-licensee informing him that under the federal Miller Tydings law, Sealy, Inc. could not establish resale prices for the entire group as they are not manufacturers, but they could direct their licensee-members to establish a uniform resale price (GX 902; Tr. 1984–1985; Doc. 3–4415).

272. In June 1951, the Detroit licensee-member telephonically solicited from J. R. Lawrence at Sealy, Inc., ideas for a suggested letter that the Detroit licensee-member could send to its retailers. J. R. Lawrence thereupon sent the Detroit licensee-member a suggested letter and stated it was essential to give the

retailers a list of the "fair traded" articles and the prices set thereon as agreed upon and set by the stockholder-licensee representatives which list J. R. Lawrence supplied (GX 903; Tr. 1986–1989; Doc. 3–4416, 3–4416A).

273. The Baltimore stockholder-licensee issued a bulletin to all of its Sealy dealers on the subject of "Discount Houses" informing them that: (a) Sealy would not tolerate price cutting on "their re-sale numbers"; (b) Sealy products would not be sold to discount houses; (c) discount houses had been shopped and the Baltimore stockholder-licensee had discovered that price cutters of Sealy merchandise were being supplied by so-called legitimate dealers; (d) the so-called legitimate dealers who were supplying these price cutters were breaking the law; (e) letters had been sent by Sealy attorneys to the parties involved threatening court action unless they ceased selling Sealy products to price cutters; (f) answers had been received from those who had been supplying the discount houses with Sealy products pledging to stop the practice in the future; (g) the Baltimore stockholder-licensee would take action, applicable to all fair trade areas, against any and all violators; and (h) the bulletin was to be a warning to all dealers found cutting the price on Sealy products or supplying anyone who cut the price on Sealy products (GX 904; Tr. 1989–1991; Doc. 3–4425).

274. In October 1953, the law firm of Haas, Holland and Blackshear, Atlanta, Georgia, by J. F. Haas, who was also the general counsel for Sealy, Inc., wrote a retailer in Baltimore, Maryland threatening to refer to local counsel for prosecution the matter of the retailer's aiding another retailer who was selling Sealy products below the "fair trade" fixed price on Sealy products, if the retailer did not give immediate writ-

ten assurance that he would immediately desist from that practice. The Atlanta law firm sent a copy of the letter to (a) Mr. E. H. Bergmann, the president of Sealy, Inc., (b) Mr. J. R. Lawrence, the vice president of Sealy, Inc., and (c) the Baltimore stockholder-licensee. At the same time, J. F. Haas wrote to another retailer in Baltimore demanding that the retailer cease sales of Sealy products at less than the resale price and threatening to refer the matter to local counsel for prosecution unless Mr. Haas received within one week written assurance from the retailer that he would comply with the demand as stated in the letter. A copy of this letter was also sent to (a) the president of Sealy, Inc., Mr. E. H. Bergmann, (b) Mr. J. R. Lawrence, the vice president of Sealy, Inc., and (c) the Baltimore stockholder-licensee (GX 905–906; Tr. 1992–1994; Doc. 3-4426, 3-4427).

275. In May 1954, Mr. E. H. Bergmann for Sealy, Inc. wrote directly to a retailer of the Pittsburgh stockholder-licensee, concerning an ad run by that retailer which featured Sealy products below the "fair trade" retail price agreed upon and set by the stockholder-licensee representatives. Mr. Bergmann advised the retailer that if he advertised for sale or sold any Sealy products below the agreed upon and set retail "fair trade" price, Sealy, Inc. was prepared to take such action as would be necessary to protect Sealy, Inc.'s products and rights, and instructed the retailer to acknowledge the notice and immediately advise Sealy, Inc. that he would abide by the minimum resale prices fixed for Sealy products. He further informed the retailer that a copy of Bergmann's letter was being sent to Sealy, Inc.'s general counsel with instructions to take immediate steps against the retailer if he did not agree to comply with the terms of that letter. In June 1954, Bergman again wrote

the retailer and informed him that although the retailer had received Bergmann's May 1954 letter, Bergmann had not received any reply from the retailer indicating his willingness to comply with the request to maintain the minimum resale "fair trade" prices fixed on Sealy products, and therefore, Sealy, Inc. had referred the matter to their general counsel for finalizing with instructions to immediately appoint local counsel to institute legal proceedings against the retailer. Mr. J. F. Haas, general counsel for Sealy, Inc., thereupon wrote the retailer informing him that Sealy, Inc. had referred the case to Mr. Haas as general counsel for Sealy, Inc. and stated that he understood that, at a conference between the retailer and Mr. Bergmann, an agreement had been reached that the retailer would immediately write Mr. Bergmann assuring him that the retailer would immediately cease selling Sealy products below the fixed retail "fair trade" price, and that such a letter had not been received. Haas further stated that unless such a letter was immediately sent to Mr. Bergmann with a copy to Mr. Haas, he would refer the matter to local counsel with instructions to file immediate suit against the retailer. In July 1954, Mr. J. F. Haas wrote an attorney in Youngstown, Ohio, that he, Haas, had referred the matter to local counsel in Ohio, and that the only remedy was for the retailer to provide Mr. Bergmann with the letter which he had promised in Chicago. In August 1954, Bergmann for Sealy, Inc. wrote the Pittsburgh stockholder-licensee that the controversy with the retailer had been successfully concluded, and a letter had been received from the retailer which stated that in the future the retailer would not sell Sealy products below the retail "fair trade" prices agreed upon and set by the stockholder-licensees. Bergmann further stated that "it has taken

considerable pressure on the part of the national office, General Counsel, and finally resorting to the appointment of local counsel * * * to institute proceedings against this firm [the retailer] for violations of the Ohio Fair Trade law" (GX 907, 909–912; Tr. 1994–1996, 2000–2007; Doc. 3–4322, 3–4411 to 3–4413, 3–4435, 3–4436).

276. In June 1954, the Cleveland stockholder-licensee wrote its retailers that all Sealy resale preticketed mattresses had been fair traded in the State of Ohio and all of Cleveland's Sealy retailers were bound by the fair trade law. He further informed the retailers that he had engaged a shopping service to investigate and report to him those dealers who were not abiding by the fair trade law, and such dealers would receive a warning; if the violations continued thereafter, he would take steps as provided in the fair trade law to put an end to those practices (GX 908; Tr. 1999–2000; Doc. 3–4338).

277. In August 1954, a retailer of the Kansas City licensee-member in St. Joseph, Missouri, wrote to E. H. Bergmann at Sealy, Inc. complaining that another Sealy dealer, located about sixty miles from St. Joseph, was selling Sealy products below the fixed retail "fair trade" prices for those products and requested Sealy, Inc. to urge "the Kansas City [licensee-member] officials to take immediate steps to correct this intolerable situation." The retailer further informed Bergmann that he had taken up the matter with the officials of the Kansas City licensee-member and had been assured that the offending dealer would receive no more Sealy products. Mr. J. R. Lawrence for Sealy, Inc. replied, with a copy to the Kansas City licensee-member, that while Sealy, Inc. did not knowingly sell to discount operations, the task of keeping Sealy merchandise out of their hands was a tremen-

dous one, and any program to be successful against such operations required an effective fair trade program for which *Sealy, Inc. on a national basis* and the Kansas City licensee-member on a local basis were laboring, and they were doing all possible to frustrate the operations of the discounters. In September 1954, the Kansas City licensee-member wrote Mr. Bergmann at Sealy, Inc. that he had visited the discount operator in Missouri and had informed him that it was absolutely essential that not *one* item of Sealy merchandise be *sold* below the fixed retail "fair trade" price which had been nationally advertised and, since the discounter had sold below that price, Kansas City would discontinue selling Sealy products to him. Subsequently, Bergmann replied to the Kansas City licensee-member that Kansas City had taken the correct steps to enforce the prices fixed by the Sealy, Inc. stockholder-licensee reprensentatives and that he should not hesitate to pass the information to other dealers and further "*Vigilance* must be a rule in the support of *our* Fair Trade prices and trade names" (emphasis supplied) (GX 913–916; Tr. 2008–2013, 2015–2019; Doc. 3–4319 to 3–4321, 3–4437 to 3–4439).

278. In February 1955, J. R. Lawrence for Sealy, Inc. wrote a retailer of the Cleveland stockholder-licensee concerning an ad run by the retailer showing Sealy, Inc.'s fair traded merchandise below the fixed "fair trade" price for that product, and stated that Sealy, Inc. was taking all the steps *it* could to protect the "fair trade" price of *its* products and solicited the retailer's cooperation and written assurance that he would not sell Sealy products below the retail "fair trade" prices fixed for those products (GX 917; Tr. 2020–2021; Doc. 3–4433).

279. In March 1955, E. H. Bergmann for Sealy, Inc. wrote the Cleveland licensee-member about the

decision by the stockholder-licensee representatives on the Executive Committee to set up a fair trade program which would be backed up by the national office in trade paper advertisements and requested the Cleveland licensee-member to send him full data on Cleveland's own fair trade program. He further stated that "The more complete this data can be * * * the better it will serve the national office purpose in formulating a national program to be presented to all of *our* people" (emphasis supplied) (GX 918; Tr. 2022–2023; Doc. 3–4418).

280. Beginning before or during March 1954, the Cleveland stockholder-licensee employed Pinkerton's National Detective Agency for the purpose of shopping various retailers of the Cleveland stockholder-licensee to determine if they were maintaining the retail "fair trade" prices on Sealy products as agreed upon and set by the stockholder-licensee representatives of Sealy, Inc. (GX 919–930; Tr. 2047; Doc. 3–4339 to 3–4402).

281. Sealy, Inc. with the stockholder-licensees of Sealy, Inc. regularly used the fair trade laws to enforce the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc. through letters written by Sealy, Inc., through its various officers, to the retailers and through letters written by the stockholder-licensees to their retailers (1) insisting that the retailers discontinue violating the retail prices on Sealy products as agreed upon and set by the stockholder-licensee representatives acting as the Board of Directors or Executive Committee of Sealy, Inc., (2) insisting that written assurance of compliance with such prices be forthcoming from the retailer, (3) informing the retailer that if such written assurance were not forth-

coming, Sealy, Inc. or the stockholder-licensee would (a) discontinue supplying the retailer with Sealy products, (b) inform other retailers to cease supplying the retailer with Sealy products, and (c) take legal action against the retailer under state fair trade laws.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the defendant and the subject matter of this action.

2. Defendant is engaged in interestate commerce.

3. Plaintiff has not proved by a preponderance of evidence that defendant, Sealy, Incorporated, has engaged in a combination and conspiracy with its manufacturing licensees to allocate territory among competitors in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. §1.

4. The assignment of exclusive territories by defendant, Sealy, to its manufacturing licensees does not violate the antitrust laws.

5. The defendant and its co-conspirators are and have been engaged in a continuing agreement, understanding, combination, and conspiracy in restraint of interstate commerce in mattresses and foundations in violation of Section 1 of the Sherman Act [15 U.S.C. §1] by agreeing to set minimum retail prices on Sealy products and to induce retailers to adhere to such retail prices.

(S) R. B. AUSTIN,
Judge, U.S. District Court.

Date: October 6, 1964.

APPENDIX B

In the United States District Court, Northern District of Illinois, Eastern Division

Civil Action No. 60 C 844

UNITED STATES OF AMERICA, PLAINTIFF

v.

SEALY, INC., DEFENDANT

FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint on two separate claims of violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, described in paragraphs 16(a) and 16(b) of said complaint. The defendant, Sealy, Incorporated, appeared and filed its answer. At the close of the government's evidence in support of the claims, the defendant moved to dismiss said complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion was denied, but the court indicated that there would be no finding that the allegations of paragraph 16(a), and proof submitted thereon, proved a violation of the antitrust laws. Defendant then presented its evidence relating to the price-fixing charge in paragraph 16(b) of the complaint and the government presented its rebuttal. At the close of all the evidence, the defendant renewed its motion to dismiss the claim of paragraph 16(a) of the complaint.

The court has considered the pleadings, evidence, briefs and arguments, and being fully informed, entered findings of fact and conclusions of law on October 6, 1964.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

This court has jurisdiction of the subject matter hereof and the parties hereto.

II.

Based upon the court's findings of fact 15 through 119 and its conclusions of law 3 and 4, the defendant's renewed motion to dismiss the claim in paragraph 16(a) of the complaint is granted and judgment is hereby entered dismissing the claim for relief contained in paragraph 16(a) of said complaint.

III.

Based upon the court's findings of fact 120 through 281 and its conclusion of law 5, the defendant and its co-conspirators, who are its stockholder licensees, have engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act by agreeing to set minimum retail prices in Sealy products and to induce retailers to adhere to such retail prices.

IV.

As used in this Final Judgment:

(A) "Mattress" means an item of bedding composed of an outer covering, or tick, enclosing innersprings or a filler of latex, synthetic foam, felt or other materials, or both, designed to be used as a pad for a bed and usually rests upon bedsprings or other foundation or support;

(B) "Foundation" means an item of bedding, apart from the bedstead, designed to support the mat-

tress and often to provide additional cushioning, commonly but not exclusively composed of an upholstered frame enclosing springs;

(C) "Combination" means a mattress and foundation manufactured as a set to match each other and to be sold together;

(D) "Sleeper" means a sofa bed, studio couch, mattress, foundation, combination or Hollywood bed ensemble;

(E) "Sealy products" means bedding manufactured by Sealy licensees under Sealy's patents and secret methods, processes or specifications and sold under the Sealy brand-name and Sealy registered trademark;

(F) "Retail store" means a person engaged in the business of selling mattresses, foundation, combinations or sleepers to consumers;

(G) "Sealy licensee" means a person who is licensed by defendant to manufacture and sell Sealy products to dealers.

(H) "Dealer" means any person, other than defendant or a Sealy licensee, purchasing bedding for resale to the ultimate consumer.

V.

The provisions of this Final Judgment shall apply to the defendant, its successors, subsidiaries, assigns, officers, directors, agents and its employees, and to all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

VI.

(A) The defendant is enjoined and restrained from continuing, reviving or renewing the aforesaid combination and conspiracy.

(B) The defendant is enjoined from entering into, adhering to or maintaining any contract, agreement, arrangement, understanding, plan or program to:

(1) fix, establish or maintain the price or other terms or conditions for the sale at retail of any mattresses, foundations, combinations or sleepers;

(2) induce any dealer to fix, establish, or maintain any minimum retail price for any mattresses, foundations, combinations or sleepers;

Provided, however, that nothing herein contained shall be construed to prohibit the defendant from disseminating and using suggested retail prices for the purpose of national advertising of Sealy products.

VII.

(A) For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted:

(1) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the

Antitrust Division, the defendant shall submit such reports in writing to the plaintiff with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment.

(C) No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the modification, termination, construction or carrying out of this Final Judgment and for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained therein.

X.

The plaintiff shall recover the costs of this action.

Enter:

(S) R. B. AUSTIN,
United States District Judge

Chicago, Illinois, December 30, 1964.

U.S. GOVERNMENT PRINTING OFFICE : 1965